

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

ANDREW AARON, et al.,
Plaintiffs,
vs.
DOMINICK RATKOWSKI and JOSEPH ROY,
Defendants.
Case No. 20-CV-1660
Milwaukee, Wisconsin
May 1, 2023
8:42 a.m.
Volume 1

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE NANCY JOSEPH
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff
Motley Legal Services
By: MS. KIMBERLEY MOTLEY
P.O. Box 1433
Matthews, North Carolina 28106
Ph: 704-765-4887
kcymotley@gmail.com

Ascend Counsel, LLC
By: MR. EDWARD MILO SCHWAB
2401 South Downing
Denver, Colorado 80210
Ph: 303-888-4407
milo@ascendcounsel.com

Knowlton Law Group, LLC
By: MS. KATHRYN L. KNOWLTON
7219 West Center Street
Milwaukee, Wisconsin 53210
Ph: 414-202-2444
kate@knowltonlawgroup.com

For the Defendant
Wirth & Baynard
By: MR. JOSEPH M. WIRTH

1 and MS. JASMYNE M. BAYNARD
2 9898 West Bluemound Road
3 Suite 2
4 Wauwatosa, Wisconsin 53226
5 Ph: 414-291-7979
6 jmw@wbattys.com
7 jmb@wbattys.com

8 I N D E X

	PAGE
PRE-TRIAL DISCUSSION	4
VOIR DIRE	17
DISCUSSION - STRIKES FOR CAUSE	70
JURY SELECTION	91
PRELIMINARY JURY INSTRUCTIONS	93
OPENING STATEMENTS	
By Ms. Motley	101
By Mr. Wirth	115
PATRICK KNIGHT VIA TELEPHONE	133
WITNESS	EXAMINATION
MADELEINE SCHWEITZER	Direct by Mr. Schwab
	Cross by Mr. Wirth
	Redirect by Mr. Schwab
TIFFANY STARK	Direct by Mr. Schwab
	Cross by Mr. Wirth
	Redirect by Mr. Schwab

1	LAURYN CROSS	Direct by Ms. Motley	166
2		Cross by Ms. Baynard	170
3		Redirect by Ms. Motley	177
4	SONORA LARSON	Direct by Mr. Schwab	183
5		Cross by Mr. Wirth	189
6		Redirect by Mr. Schwab	193
7		Recross by Mr. Wirth	195
8		Redirect by Mr. Schwab	196
9			
10	LUKE VETTER	Direct by Ms. Motley	213

E X H I B I T S

13	EXHIBIT NO.	DESCRIPTION	REC'D
14	215	(Page 16 - last entry only)	247
15	217		236

23 U.S. Official Court Reporter: THOMAS A. MALKIEWICZ, RMR, CRR
 24 Proceedings recorded by computerized stenography, transcript
 25 produced by computer aided transcription.

TRANSCRIPT OF PROCEEDINGS

THE CLERK: Judge Joseph is on the bench calling case 20-CV-1660, Andrew Aaron, et al., versus Dominick Ratkowski, et al., scheduled for a jury trial.

Appearances, please, starting with the plaintiff.

MS. MOTLEY: Attorney Kimberley Motley appearing in person with attorneys Milo Schwab and Kathryn Knowlton.

THE COURT: Good morning, Miss Motley and Mr. Schwab and Miss Knowlton. And good morning to the plaintiffs who are present in court as well.

MS. BAYNARD: Good morning, Your Honor. Attorney Jasmyne Baynard and attorney Joe Wirth appearing on behalf of defendants, Dominick Ratkowski and Joseph Roy.

THE COURT: Good morning, Miss Baynard, Mr. Wirth, Mr. Ratkowski, and Mr. Roy. Good morning one and all.

We are here for a jury trial this morning. I understand that the jury is in the building, they are currently in orientation and getting settled in, and they'll be ready for us very soon.

So I just have a couple of matters before we bring them up to the courtroom. In regards to voir dire, I had E-mailed to the parties my voir dire questions. Starting with the plaintiff, Miss Motley. Do you have any feedback or anything on the voir dire questions?

MS. MOTLEY: Your Honor, I don't have anything with

08:43 1 regard to the voir dire questions. I don't know if my
2 colleagues have anything to add.

3 MR. SCHWAB: No.

4 MS. KNOWLTON: No, Your Honor.

08:43 5 THE COURT: All right. You may have noted in regards
6 to the voir dire at a point in the voir dire questioning, I
7 will ask, number one, to give -- I'll give each side an
8 opportunity to introduce themselves to the jury, and then later
9 in the voir dire questions, I will be asking that you read the
08:44 10 names of the potential witnesses and plaintiffs to the jury to
11 make -- to ask whether or not they know or are related to
12 anyone.

13 Miss Motley, will I be calling on you?

14 MS. MOTLEY: Yes, Your Honor.

08:44 15 THE COURT: All right. And for the defense, same to
16 you, as to the voir dire questions, any feedback or -- or any
17 issues with voir dire questions?

18 MS. BAYNARD: Nothing, Your Honor.

19 THE COURT: And as to calling on a person to read the
08:44 20 name of witnesses and introduce themselves to the jury, who
21 I'll be calling on?

22 MS. BAYNARD: That would be me, Your Honor.

23 THE COURT: Okay. Thank you. Moving along, the plan
24 is that as soon as we impanel the jury to move into opening
08:45 25 statements, so be ready to do that this morning. It may occur

08:45 1 as early as before lunch, so I don't know how fast we're going
2 to move, but be ready if it does happen before lunch that
3 you're ready to do that.

4 And for opening for the plaintiffs who will I be calling
08:45 5 on?

6 MS. MOTLEY: Me, Your Honor.

7 THE COURT: And for the defense who will I be calling
8 on?

9 MS. BAYNARD: Attorney Wirth.

08:45 10 THE COURT: All right. And then right after opening
11 statement, opening statement we'll be moving into the
12 plaintiffs' presentation of their case in chief. Miss Motley,
13 please give me the name of the witnesses that you're calling
14 immediately to open your case. And it's helpful to me if you
08:45 15 give them in the order that you'll be calling them.

16 MR. SCHWAB: Your Honor, this is actually a -- we
17 just learned this morning of an issue here. We had served
18 Barry Weber less than a week ago. We've just been informed --
19 He was anticipated to be our first witness. We just learned
08:46 20 that he apparently is in Israel now, but we served him fewer
21 than seven days ago. Nobody has ever informed us from
22 Mr. Weber to defense counsel who apparently does know his
23 whereabouts now and made that representation but only this
24 morning. It's created an issue for us, so we're still working
08:46 25 that out, but we have a concern that he may actually just be

08:46 1 avoiding testimony and not actually out of the country.

2 THE COURT: All right. Mr. Schwab, refresh my memory
3 Mr. Weber, is he the mayor?

4 MR. SCHWAB: He is the former chief of police.

08:46 5 THE COURT: Chief of police.

6 MR. SCHWAB: He can speak to many issues regarding
7 policy, procedures, organization. There were some important
8 things we were going to get through him, and like I said, he
9 was served five days ago, four days ago, personally at his
08:47 10 home. We spent over a thousand dollars trying to get him
11 served, and we were surprised this morning that apparently he
12 somehow is now out of the country.

13 THE COURT: Mr. Schwab, and again to be clear, you
14 anticipate calling him regarding policy and structure, again as
08:47 15 to the DPPA?

16 MR. SCHWAB: Well, as to the organizational
17 structure, training, things like that, which relate not --
18 relate to these officers and their knowledge about, for
19 example, open public records and how these policies are
08:47 20 drafted, what it takes to be --

21 You know, we have a lot of questions that we wanted to get
22 through him, and they were relevant and foundational to a lot
23 of the testimony we're going to get in later. He's also the
24 witness that would allow us to introduce certain exhibits.

08:47 25 THE COURT: Okay. As to how policies are drafted?

08:47 1 MR. SCHWAB: No. No, no. No, no. But as to
2 policies, he's the final policy maker. He is the one that
3 adopts them. He would be a relevant person to admit policies
4 here.

08:48 5 THE COURT: Okay. I understand what you're saying,
6 I'm just trying to get a very specific answer.

7 MR. SCHWAB: Sure.

8 THE COURT: Are we talking about DPPA policy?
9 Because, again, I'll be asking throughout the trial that, you
08:48 10 know, the evidence is connected to the DPPA, so --

11 MR. SCHWAB: So the DPPA policy would be one, the
12 open public records, which is the second claim, that relates
13 deeply to that, training for employees and officer of the
14 police department that goes to knowledge --

08:48 15 THE COURT: Yeah. Training in regard to the DPPA?

16 MR. SCHWAB: Training as regards to how they would
17 know whether something is a driver's record.

18 THE COURT: Okay. So that to me that connects to the
19 DPPA.

08:48 20 MR. SCHWAB: Yes, of course. It connects to the
21 knowledge component of the DPPA. Yes, Your Honor.

22 THE COURT: Thank you, Mr. Schwab.

23 MR. SCHWAB: And that's not it. I'd have to review
24 my notes, but we anticipated -- we anticipated a few other
08:48 25 things as well. You know, it's -- it's troubling that we only

08:49 1 were informed of this this morning.

2 THE COURT: Thank you, Mr. Schwab. I will give the
3 defense an opportunity to be heard on the Weber subpoena
4 situation, but I don't know if you're addressing this or
08:49 5 Miss Motley is addressing this. I need the name of the
6 witnesses who are being called today.

7 MR. SCHWAB: We're still -- We're scrambling. We
8 would like to call -- I think we'd like to call Captain Vetter
9 first, and then we anticipate calling several plaintiffs.
08:49 10 Tiffany -- Tiffany Stark; is that correct?

11 THE COURT: Mr. Schwab?

12 MR. SCHWAB: Yes.

13 THE COURT: Scrambling as to witnesses is not
14 something a judge wants to hear on the day of trial.

08:49 15 MR. SCHWAB: I understand.

16 THE COURT: We are talking who are you going to call?
17 So I heard Mr. Vetter?

18 MR. SCHWAB: And I apologize, I know, but we also
19 expect that someone won't dodge a subpoena.

08:49 20 THE COURT: Yeah. We're going to get back to the
21 subpoena. Right now I'm just taking notes.

22 MR. SCHWAB: He was going to be our first witness.
23 He was actually going to take a substantial part of today, so
24 now we're trying to figure out how we can fill this space after
08:50 25 someone who was properly subpoenaed has chosen not to appear

08:50 1 and did not give us that warning. Tiffany Stark, Sonora
2 Larson, Rebecca --

3 THE COURT: Okay. Just slow down for me because I'm
4 actually writing their names and also -- and I'm asking because
08:50 5 also the staff is -- needs to know and the court reporter needs
6 to know as well.

7 MR. SCHWAB: Yeah.

8 THE COURT: So your first will be?

9 MR. SCHWAB: Rebecca Wigley.

08:50 10 THE COURT: Next?

11 MR. SCHWAB: Tiffany Stark. Sonora Larson. If you
12 need me to spell that, I can.

13 THE COURT: I got it. Thank you.

14 MR. SCHWAB: Madeleine Schweitzer. And that's who we
08:50 15 would anticipate calling. Hopefully that will take us close to
16 the end of the day, Your Honor.

17 THE COURT: Okay. Thank you, Mr. Schwab. And just
18 be ready throughout the trial, I'll be checking in on the plan,
19 what are we doing? So if it's the morning, I'll be asking
08:51 20 who's being called in the morning, the afternoon when we close
21 in the evening, I'll also ask to expect the next morning. Also
22 that allows the defense to be ready so we have no, again, no
23 dead time to respect your time, to respect the jury's time.

24 MR. SCHWAB: Yes, Your Honor.

08:51 25 THE COURT: Okay. Thank you. All right. So

08:51 1 Ms. Baynard or Mr. Wirth, first on the Weber subpoena
2 situation.

3 MR. WIRTH: Judge, Barry Weber was a party to this
4 lawsuit, he was dismissed as a party to this lawsuit, so in
08:51 5 that sense he became a witness. There was some conversations
6 between defense counsel and plaintiffs' counsel on whether we
7 would accept service on behalf of any Wauwatosa employee past
8 or present, and we said no, we can't. We will -- We will
9 arrange to have the parties present, they are, and if you have
08:52 10 active members of the police force that you want to call as
11 witnesses such as Captain Vetter, just let us know and we'll
12 make arrangements to have him here.

13 We were never advised that Barry Weber was served. What
14 we were -- What we did, and let's be honest, Judge, it was
08:52 15 four or five days before the start of trial, and Mr. Weber
16 was -- we were advised by his attorney that Mr. Weber was on
17 his way out to the Middle East on a church trip, so I don't --
18 the -- the appearance of Mr. Weber was not facilitated through
19 our office.

08:52 20 Mr. Weber is no longer a party, and attempting to serve
21 someone four or five days before a trial that's been scheduled
22 for months, sometimes this stuff happens. We didn't facilitate
23 his absence from the courtroom and any suggestion to the
24 contrary is absurd.

08:52 25 THE COURT: Mr. Schwab, do you wish to be heard?

08:52 1 MR. SCHWAB: Yeah, that is exactly the problem. They
2 did not facilitate. We tried to work with them and they
3 refused.

4 MR. WIRTH: No.

08:53 5 MR. SCHWAB: We asked if they would accept service,
6 and they said no. So we spent over a thousand dollars spending
7 weeks trying to serve him. He avoided service successfully
8 until the final week, which is in advance of the deadline.

9 Forty-eight hours, I believe that's what the federal rules say.
08:53 10 We served him early enough and in advance enough. His attorney
11 apparently never reached out to us to let us know.

12 I don't know if he's actually out of town, but it's
13 problematic and it is disrespectful to the authority of the
14 court for someone to be served with a subpoena and beliedly
08:53 15 [sic] ignore it.

16 And let's be clear. This is not just a random witness,
17 this is the individual who was a defendant in this case, who
18 has been represented by these attorneys, is the former chief of
19 police for this -- and the former boss for these two
08:53 20 individuals. He has important information, and to not even do
21 us the courtesy of reaching out to us, I think that's worthy of
22 contempt of court.

23 THE COURT: All right. I'm pausing here. I -- I
24 can't compel defendants' counsel to facilitate the receipt of
08:54 25 the subpoena. While it would've facilitated and made things

08:54 1 easier, but I'm not sure I have the authority to compel them to
2 do so.

3 MR. SCHWAB: I'm not saying that you have the
4 authority to compel them to do so, but I'm saying that the idea
08:54 5 that -- that they were not informed or they had no -- that's --
6 that's patently false. I would ask perhaps that the Court send
7 a marshal over to Mr. Weber's house and see if he actually is
8 in Israel.

9 Again, the Court's authority here is in question. Can
08:54 10 someone, subpoenaed lawfully by this court and by officers of
11 this court, ignore it for a trial? That's an important
12 question. And that goes to your discretion and your authority
13 here, Your Honor. He ignored that.

14 If he had reached out, he never filed anything. He
08:55 15 apparently has an attorney who could've filed a third-party
16 objection to inform the Court. They could've reached out to us
17 to let us know he would not be available this day and perhaps
18 would be available another day. All of that was ignored. This
19 is really troubling behavior.

08:55 20 THE COURT: Mr. Schwab, do you have the attorney's
21 name?

22 MR. SCHWAB: I do not because, again, they didn't
23 reach out to me. They apparently only reached out to defense
24 counsel who also did not inform us even though we've been
08:55 25 communicating essentially daily. We were -- We only learned

08:55 1 of this this morning, and it feels like we have been
2 sandbagged, Your Honor.

3 THE COURT: Thank you, Mr. Schwab. Mr. Wirth, who is
4 representing Mr. Weber to your knowledge? Or Miss Baynard?

08:55 5 MR. WIRTH: I think it's Pat Knight.

6 MS. BAYNARD: Just to be clear, the attorney reached
7 out to us because their process server was trying to serve
8 Mr. Weber, reached out to us and said, you're the attorneys of
9 record on this. I got a call from the process server saying
08:56 10 they're trying to serve Barry Weber, giving you a heads-up, and
11 I believe we discussed it briefly at the second final pre-trial
12 conference, and it was brought up that that was the first time
13 we were aware till the Sunday we had the pre-trial conference
14 on Monday that Barry Weber was served.

08:56 15 So I don't think that this attorney represents him, I
16 believe he represented him in the John Doe state hearings, and
17 that's why the process servicer -- process server reached out
18 to Mr. Weber. And I think having the -- You know, I just want
19 to make it very clear and the Court is aware of the

08:56 20 communications between the parties over the past week, I would
21 not say that we've communicated, we're not sure of the 110
22 witnesses that they've listed who they intend to call, so to
23 represent to the Court that we've been in constant
24 communication giving curtesies about who's being called, what
08:57 25 information they have, that just hasn't occurred. And, I mean,

08:57 1 you've been witness to some of that.

2 So I don't -- Back to your question, I don't know if Pat
3 Knight necessarily represents him, but that's who the process
4 server reached out to.

08:57 5 THE COURT: All right. Anything further, Mr. Schwab?

6 MR. SCHWAB: Yeah. Just also to remind the Court, we
7 are anticipating doing remote testimony. If we had been aware
8 of this we could've arranged that, but we've been denied even
9 that opportunity here. But he was properly served. Thank you,
08:57 10 Your Honor.

11 THE COURT: Thank you, Mr. Schwab. Mr. Miller, what
12 is the status on the jury?

13 THE CLERK: They're ready.

14 THE COURT: They're ready. Okay. So I will take up
08:57 15 this matter during a break to allow us to get started with the
16 voir dire questions. I remind the parties that all witnesses
17 are sequestered, so please properly advise your witnesses and
18 also remind witnesses to have their phones off and not visible
19 while they are on the stand. And I believe that's all I need
08:58 20 for now.

21 As to voir dire, let's bring the jury in.

22 (There was discussion off the record.)

23 THE COURT: Miss Motley, what's -- confirm the number
24 of plaintiffs? Because I do want to tell the jury.

09:00 25 MS. MOTLEY: 57.

09:00

1 THE COURT: 57. Thank you.

2 (There was discussion off the record.)

3 THE COURT: The jury's coming from another floor, so
4 you may be seated until we hear them coming.

09:02

5 MR. SCHWAB: Your Honor, would now be an appropriate
6 time? I'm sorry, I should've asked, for an order sequestering
7 witnesses?

8 THE COURT: I've already entered that. It was
9 entered during the final pre-trial.

09:03

10 MR. SCHWAB: I apologize. I forgot it.

11 THE COURT: There's a lot going on. I understand.

12 MR. SCHWAB: Thank you, Your Honor.

13 THE COURT: I'm sorry. One second. We have to get
14 the court reporter give us a signal that he's back on.

09:03

15 All right. Miss Motley, you wish to be heard?

16 MS. MOTLEY: Your Honor, I don't think parties have
17 settled on -- or we're not aware of which redacted target lists
18 we should use. There was one filed by us, there was one filed
19 by them. I don't know if that's something that we want to
09:04 20 speak about now or later.

21 THE COURT: We'll talk about it later, unless you
22 think it's needed for voir dire. I don't think it is.

23 MS. MOTLEY: I do think it's needed before openings,
24 but not for voir dire.

09:04

25 THE COURT: Okay. Let's take it up before opening,

09:04 1 but while we're waiting, the redacted version that I approved
2 only redacts the unnamed plaintiffs, so everyone who's not
3 named, or named plaintiff, should be redacted, and that's the
4 only information that I ordered redacted, no other redactions.

09:04 5 MR. WIRTH: I think that would be our Exhibit 1000.

6 MS. MOTLEY: Well, Your Honor, there's -- I don't
7 know if you want to get into the arguments now or later. We
8 have some issues with the defendants' redactions.

9 THE COURT: All right. So let's take it up before
09:05 10 opening.

11 MS. MOTLEY: Thank you.

12 THE COURT: Thank you.

13 (There was discussion off the record.)

14 THE CLERK: Andrew Aaron, et al., versus Dominick
09:16 15 Ratkowski and Joseph Roy, scheduled for a jury trial.
16 Appearances, starting with the plaintiff?

17 THE COURT: Please be seated first, everyone.

18 MR. SCHWAB: Good morning, Your Honor. Milo Schwab,
19 Kimberley Motley, and Kathryn Knowlton on behalf of plaintiffs.

09:16 20 THE COURT: Good morning to you all.

21 MS. BAYNARD: Good morning. Attorney Jasmyne Baynard
22 and attorney Joe Wirth on behalf of defendants.

23 THE COURT: Good morning to you as well. All right.
24 Are we all set? All right. Good morning, everyone. We are
09:17 25 very grateful to have you here this morning. Serving as jurors

09:17 1 is right up there with the right to vote as the privileges that
2 we have as citizens, so welcome and thank you.

3 And you may already know that civil jury trial, trial by
4 jury is one of the features of our legal system, so it's a real
09:18 5 privilege that you get to participate in that capacity.

6 To get us started before I start running my mouth and
7 talking about all the civic virtues of serving as jurors, I
8 have to put you under oath. If you all please stand and raise
9 your right hands.

09:18 10 (The jurors were sworn.)

11 ALL JURORS: I do.

12 THE CLERK: Thank you.

13 THE COURT: Please be seated. So you heard the case
14 called, but let's do some introductions to orient you as to who
09:18 15 we are and what's going to go on here. I'm Judge Joseph, I'm
16 one of the magistrate judges here in this district. And I'm
17 going to introduce the court staff that I have with me.

18 Mr. Miller, with who you heard call the case, he is my
19 courtroom deputy who will be with me during this trial, and
09:19 20 there's another courtroom deputy, Evan Romel, who you may also
21 see. And next to him in front of me is Miss Cronin. She is my
22 law clerk. And then in the corner is Mr. Eder, court security
23 officer, or bailiff, who will be with us during this trial.
24 And another individual, Mr. Kurzynski, who's in the back, our
09:19 25 other CSO, will be in -- helping us throughout the trial here.

09:19 1 And then, actually the most important person in this
2 courtroom is our court reporter. He's the most important
3 person because he's the court historian. So he's taking down
4 every word that is being said, every um-hum, huh-uh, say it
09:19 5 again, and he will be joined this week by another court
6 reporter, Susan Armbruster. So that's who we are, that's the
7 court team. As you can tell from the team working together, it
8 takes a lot of players, it takes a village to pull off a trial.
9 Did any of you know any of the names that I just
09:20 10 introduced? If you do, please raise your hand. Juror number
11 12, who do you know?
12 A JUROR: I'm familiar with you; I was a court
13 reporter for 41 years in Milwaukee.
14 THE COURT: Tell me your name.
09:20 15 A JUROR: I know Tom and I know Frank.
16 THE COURT: All right. Well, thank you. Now, I will
17 ask you this. Does the fact that you are familiar with me,
18 that you know the court reporter, and I think you mentioned the
19 CSO, will that get in the way of you being a fair and impartial
09:20 20 juror to both sides of this case?
21 A JUROR: No.
22 THE COURT: Okay. Anyone else knows anyone I already
23 introduced?
24 (No response.)
09:21 25 THE COURT: All right. I don't see any other hands

09:21 1 up. Let me allow plaintiffs' counsel to introduce themselves,
2 and I'll ask you the same question about them. Miss Motley?

3 MS. MOTLEY: Good morning, Your Honor. Good morning.
4 My name is attorney Kimberley Motley, and I'm here with
09:21 5 attorney Milo Schwab, attorney Kathryn Knowlton.

6 THE COURT: Thank you, Miss Motley. Anyone on the
7 panel know Ms. Motley, Mr. Schwab, or Miss Knowlton, have done
8 business with them or their firm or being represented by them
9 or know them in any way? If so, please raise your hand. All
09:21 10 right. Juror number one.

11 A JUROR: Yes, I'm familiar with Kimberley Motley as
12 a -- attorney as she's affiliated with UW-Milwaukee in some
13 ways, and I worked there for 12 years.

14 THE COURT: Okay. Thank you, juror number one. Now,
09:21 15 does the fact that you know Ms. Motley through a professional
16 capacity, will that get in the way of you being a fair and
17 impartial juror in this case to both sides?

18 A JUROR: No.

19 THE COURT: Thank you. Let me just ask the defense
09:22 20 counsel to please introduce themselves to you.

21 MS. BAYNARD: Attorney Jasmyne Baynard, attorney Joe
22 Wirth, and we're with -- and we represent the defendants.

23 THE COURT: Thank you, Miss Baynard. Anyone in the
24 panel know Ms. Baynard or Mr. Wirth? Please raise your hand.

09:22 25 (No response.)

09:22 1 THE COURT: I do not see any hands. All right. So I
2 have some additional questions for you, and the purpose of the
3 questions is for voir dire, for jury selection, and voir dire
4 is a very fancy French legal talk to mean to tell the truth.
09:22 5 And the purpose of the questions are not to embarrass you, not
6 to put you in the spot or to be nosey and get in your business,
7 but as you can tell already, the purpose of the questions is to
8 assess whether you can be fair and impartial jurors to both
9 sides of the case. So that's where I am going when I'm asking
09:23 10 you these questions.

11 In answering the questions, I have some questions for you
12 on the placard that you'll be answering to introduce yourselves
13 to us. Please speak loudly so that we all can hear you, we all
14 can take notes if we want to take notes, and most importantly
09:23 15 we want to help the court reporter catch every word that you
16 are saying, and also please speak slowly as well.

17 So on the placard, you will see that we ask you to, and
18 for those of you in the back, we'll start with the jury box and
19 then we'll turn it to the back so you'll be able to see. Just
09:24 20 one second here. So the placard asks for your name, your age,
21 your address, and when I say address, just a city and state,
22 Milwaukee, Milwaukee County, not street address. Your marital
23 status, whether you have any children, and since we're talking
24 about children, go ahead and brag about those grandchildren too
09:24 25 if you have any. If you want to brag about a pet, go ahead, we

09:24 1 won't hold it against you either. The extent of your formal
2 education, your occupation, or if you're retired, tell us what
3 you did before you retired. Your spouse's occupation or your
4 spouse's former occupation, and although not on the placard,
09:24 5 but since this is the only time during the trial you'll get to
6 talk to us, tell us a fun fact about you. And if you don't
7 want to do that, just say, Judge, I'm not fun. And that's
8 okay. All right?

9 So let's get started. Juror number one, you're going to
09:25 10 kick us off nice and loudly and slowly, please.

11 A JUROR: Thank you. My name is XXXXX XXXXX, and I'm
12 66 years old. I live in Wauwatosa. I'm married for 35 years
13 this year, and I think that's a very fun fact. I have a
14 daughter who's getting married this summer, she's 30. I have a
09:25 15 master's degree from UW-Milwaukee where I worked for the past
16 12 years. I'm currently retired, and I was a fundraiser for
17 the university. My husband is a professor at Alverno College,
18 and he's still employed. Thank you.

19 THE COURT: Thank you, juror number one. And
09:25 20 congratulations, that long marriage and the upcoming wedding as
21 well. Juror number two?

22 A JUROR: Hi. My name is XXXXX XXXXXXXX-XXXXXX. I
23 was born in 1955, so not always sure of the age, but you can do
24 the math from that.

09:26 25 THE COURT: Are you asking lawyers to do math?

09:26 1 A JUROR: Yes, I am. In November of 1955. I'm from
2 Milwaukee, live in the Bay View area, and I've been married
3 since 1996. I have no children. As far as education, I have
4 two years at a liberal arts college with art and English Lit as
09:26 5 my majors. I'm retired, and before retirement -- I retired
6 when my mother developed Alzheimer's and my sister took a leave
7 from her job, so it was a little earlier than I would've wanted
8 to. I was a receptionist secretary at a tax firm. Before that
9 I was a hairdresser for many years, and my husband, he works at
09:27 10 Verizon, he's an engineer installer, and not quite sure what,
11 he's been working at home since COVID, and it's really turned
12 into a working at home job with just occasional trips out. And
13 not going to have any fun facts. I have two cats, one bit me
14 this morning, so I'm swelling up right now.

09:27 15 THE COURT: Oh, no. Oh, no. Hope you're okay.
16 Thank you, juror number two.

17 A JUROR: Hi. My name is XXXX XXXXXXXXX. I'm juror
18 number three. I'm 29 years old. I live in the City of
19 Whitewater. I am married for four years and have one child. I
09:27 20 received a bachelor's degree and I'm working at the Whitewater
21 Unified School District as a data analyst, and my wife is a
22 part-time social media marketer for a small bakery called Wood
23 Street Bakery. No fun facts about me.

24 THE COURT: You're not fun, juror number three.
09:28 25 Okay. That's fine.

09:28 1 A JUROR: Juror number four, XXXXX XXXXXXXX.
2 Fifty-three, from New Berlin. Been married for 33 years. I
3 have three daughters and four grandchildren. I have an
4 associate's degree in -- with a finance background on that.
09:28 5 And I currently work for Global Payments, it's a credit card
6 processor, I do apsis development management. My husband works
7 for True Value, and he's a field specialist at -- helps stores
8 that want to expand and remodel. Fun fact, going on my first
9 cruise next year.
09:28 10 THE COURT: Thank you.
11 A JUROR: I'm juror number five. My name is XXXXXXXX
12 XXXXXXXX. I am 23 years old. I'm from Mayville. I am single.
13 No kids, but two dogs. I went to culinary school for about a
14 year, I work at Kwik Trip as the food service leader, and
09:29 15 that's about it.
16 THE COURT: Thank you.
17 A JUROR: I'm juror number six. My name is XXXXX
18 XXXXXXXXXXXX. I am 39 years old. I live in Milwaukee. I'm
19 married. I have two pugs, no children. I have a bachelor's
09:29 20 degree. I work for Clarios, formerly Johnson Controls, and I
21 and I'm a commodity manager. My husband is an accountant. And
22 he worked for Northwestern Mutual. I do have to tell you that
23 I have a trip planned for Friday, and I'll be gone Friday and
24 Monday this week.
09:29 25 THE COURT: Thank you. Juror number seven?

09:30 1 A JUROR: Hi. My name is XXXXXXXX XXXXXXXXXXXX. I am
2 60 years old. I live in Cudahy. Recently widowed, no
3 children, and a high school education, graduate. And currently
4 work at McAdams Graphics as a machine operator.

09:30 5 THE COURT: Thank you.

6 A JUROR: I am juror number 14. I am 43 years old.
7 I currently live in Waukesha. I am married, I have two
8 children and a dog. I have, let's see, education, I have some
9 college, never finished. I am a senior customer care
09:30 10 representative and collector for an oil distributing company.
11 My husband works in I.T., and fun fact, my entire family loves
12 to be outside.

13 THE COURT: I didn't catch the last word. Your
14 entire family?

09:31 15 A JUROR: Loves to be outside.

16 THE COURT: That is wonderful. Hopefully we get some
17 nice weather for that.

18 A JUROR: Yeah. Yeah.

19 A JUROR: Good morning. I'm juror number 13. I'm
09:31 20 35. Live in Sussex. Married with two children. Have a
21 bachelor degree. I am a senior project lead with Milwaukee
22 Tool. My wife stays at home with the two children.

23 THE COURT: You holding back on that fun fact about
24 you?

09:31 25 A JUROR: I can't think of anything.

09:31 1 THE COURT: All right. Thank you.

2 A JUROR: Juror number 12. XXXXX XXXXXXXXX.
3 Sixty-four years of age. I live in Delafield. In a long-term
4 relationship. I have one child, two grandchildren.
09:31 5 Associate's degree from Concordia. I was a court reporter for
6 41 years. My partner's occupation was in sales, and I love to
7 travel.

8 THE COURT: Wonderful. Thank you.

9 A JUROR: I am juror number 11. I'm age 64. I'm --
09:32 10 I live in the City of -- the County of Milwaukee. I am single.
11 I have no children. I have a bachelor's degree. I am retired
12 from the state of -- the state as a revenue auditor, and I
13 don't have any fun facts.

14 THE COURT: Thank you.

09:32 15 A JUROR: Juror number 10, name's XXXX XXXXXXXX. I
16 live in New Berlin. Married, empty nester. Two grown boys out
17 on their own, two grandchildren. Education, the last class to
18 graduate from Boys' Technical High School before they changed
19 the name. Occupation, I'm a heavy equipment mechanic for Payne
09:32 20 and Dolan, and my wife is retired. She was in the offices for
21 Roundy's. No fun facts.

22 THE COURT: Well, congratulations on that empty nest
23 thing. That's big.

24 A JUROR: Juror number nine. XXXXX XXXXXXXXX.
09:33 25 Forty-six years old. Live in Delafield. Married, three kids,

09:33 1 master's degree. Currently lead market development for
2 Forefront Dermatology, wife is a teacher in Waukesha. And I'm
3 the least attractive person in my house.

4 THE COURT: Thank you for sharing that.

09:33 5 A JUROR: XXXXX XXXXX. Juror number eight. I'm 63
6 years old. I live in Greenfield, Whitnall area. Married. One
7 child and two grandchildren. I have a bachelor's degree. I
8 work at Milwaukee County, I'm at the airport. I'm the
9 accounting manager, and my wife's a homemaker.

09:34 10 THE COURT: Thank you, juror number eight. And now
11 we'll turn the placard toward the back and get the microphone
12 rotating in the back to hear from our colleagues in the back.
13 Are you able to see that? Should we move the placard closer
14 to --

09:34 15 A JUROR: I'm fine, thank you.

16 THE COURT: Thank you.

17 A JUROR: I'm juror number 15. I'm 50 years old. I
18 live in West Allis. I'm single. No children. Some college.
19 I work as a -- in food service. And one of my favorites things
09:34 20 to do is to play golf.

21 THE COURT: Thank you, juror number 15.

22 A JUROR: My name is XXXXXXXX XXXXXX, juror number 16.
23 I am 23 years old. I live in Milwaukee. I'm single. My only
24 children are my three cats. I just got my bachelor's degree,
09:35 25 and I'm going back for my master's in fall. I currently work

09:35 1 at JusticePoint and pre-trial services as a screening
2 supervisor at the Milwaukee County Jail. And I guess my fun
3 fact is I play ultimate Frisbee competitively.

4 THE COURT: Thank you.

09:35 5 A JUROR: Good morning. My name is XXXXXXXX XXXX,
6 juror number 17. I am 38 years old, I live in St. Francis. I
7 am married and have two kids and three dogs. I have two
8 master's degrees. I am a research administrator at UWM, my
9 husband is a butcher, and prior to working at UWM as a public
09:35 10 school teacher for eight years I taught French and Spanish.

11 THE COURT: Thank you.

12 A JUROR: Hi. Jurors number 18. XXXXXXXX
13 XXXXXXXXXX. I'm 57 years old. Live in Franksville. I'm
14 happily divorced. I have three grown children. I have my
09:36 15 master's degree. I'm vice president of sales for a
16 manufacturing company in Kenosha. Fun fact is our company is
17 one of the number one manufacturers of correctional lighting.

18 THE COURT: Thank you.

19 A JUROR: I'm juror number 19. My name is XXXXX
09:36 20 XXXXXXXXXX. I'm 43 years old. I live in Menomonee Falls.
21 I've been married for 18 years with two children. I have a
22 master's degree. I am a high school teacher at Nicolet High
23 School, and my husband is in risk management for BMO Harris.
24 Fun fact is I like to run.

09:36 25 THE COURT: Thank you, juror number 19.

09:36 1 A JUROR: Hello. Number 20. XXXX XXXXXX.
2 Thirty-four years old. Live in Saukville. I'm married, have
3 two kids. I got a master's degree, I'm a accountant for a
4 manufacturing company, and my wife currently stays home with
09:37 5 our kids. And not a lot of fun.

6 THE COURT: Thank you.

7 A JUROR: Hello. I am juror number 21. My name's
8 XXXX XXXXXX. I live in Bayside, Wisconsin. I'm currently going
9 through a divorce process, so that's almost finalized, who-hoo.
09:37 10 No kids. I have one dog, cavalier King Charles spaniel. His
11 name is Thomas; he's the best. I have a bachelor's degree in
12 supply chain and operations management from UW-Milwaukee, also
13 went to Nicolet. Nice. That being said, I work for a
14 manufacturing company. We make gutter guards and gutter
09:37 15 hangers. That's, again, very fun. My spouse, who's my
16 girlfriend now, is a PT. And one little fun fact about me, I
17 love Mazda Miatas, and I actually did my due diligence prior to
18 this court case, and had a 99 percent, I should say, chance of
19 having this court case today, I found out on Google, so I did
09:38 20 my due diligence and did a little research, so I already know a
21 little bit more about this case than probably most.

22 THE COURT: All right. Thank you, juror number 19
23 [sic].

24 A JUROR: 21.

09:38 25 A JUROR: I'm juror number 22. My name is XXXXXX

09:38 1 XXXXXX. I am 46. I live in Greendale. I'm married with one
2 15-year-old son. I have an associate's degree in science, and
3 I'm a branch manager at Educators Credit Union. And my husband
4 is an I.T. for the City of Muskego.

09:38 5 THE COURT: Thank you, juror number 22.

6 A JUROR: Good morning. My name is XXXX XXXX. I am
7 57 years old. I live in the City of Greenfield in Milwaukee
8 County. I've been married for 27 years. I have a 25-year-old
9 son. I completed a five-year apprenticeship program. I'm a
09:39 10 master electrician and do a lot of automation work. My wife is
11 actually a pastor at Evangelical and Reform United Church of
12 Christ in Waukesha, and my fun fact is I'm a drag-racer.

13 THE COURT: Thank you.

14 A JUROR: Good morning. Juror number 25. I am XXXX
09:39 15 XXXXXXXX. I'm 24 years old. I'm from Milwaukee. I'm not
16 married, no children, even though my niece and my nephews, they
17 are my children. I am currently working on my associate's
18 degree in respiratory therapy. I work as a banker at
19 Huntington Bank, formerly known as TCF, and my fun fact, I
09:39 20 lived in Colorado for three years.

21 THE COURT: Thank you, juror number 25 -- Is that
22 25?

23 A JUROR: Yes.

24 THE COURT: Thank you, juror number 25.

09:39 25 A JUROR: Hi there. This is juror number 24. Name

09:39 1 is XXXX XXXXX. Sixty-seven years old from Lake Geneva,
2 Walworth County. Married for 24 years. We have three
3 children, two dogs. Associate's degree in engineering.
4 Occupation, I work at Nordco in Oak Creek. We make the magnets
09:40 5 equipment for the railroad. My wife is a nurse at Children's
6 Hospital. And I do absolutely nothing fun.

7 THE COURT: Thank you, juror number 24.

8 A JUROR: I'm juror number 23. Name is XXXXXX
9 XXXXXXXX. Age is 31. I'm from Hartford, Wisconsin. Marital
09:40 10 status, been married for about six months. No kids, but we
11 just got a puppy, so just as good. Education, I have a
12 bachelor's degree and I am an accountant at Northwestern
13 Mutual, and my spouse is a -- works in copyright at Northwest
14 Publishing House. And I do nothing fun.

09:40 15 THE COURT: Thank you, juror number 23.

16 A JUROR: I'm juror 27. My name's XXXXX XXXXX. I
17 live in Milwaukee. I've been married for seven years; we have
18 two small children. I have a master's degree in architecture,
19 I'm an architect, and my wife is a digital marketing manager,
09:41 20 and I've been to all 30 major league baseball parks.

21 THE COURT: Thank you, juror number 27.

22 A JUROR: Good morning. I'm juror number 28. My
23 name is XXX XXXXXX. I'm 57 years old. I live in Mukwonago,
24 it's in Waukesha County. I'm currently married for 33 years.
09:41 25 I have three children, three dogs, a cat, two horses, and a

09:41 1 snake. I have a bachelor's degree in engineering, I work
2 part-time as an engineer, my spouse is retired as a doctor of
3 audiology, and I'm currently wearing socks with dinosaurs
4 riding skateboards.

09:41 5 THE COURT: Best fun fact. Thank you, number 28.

6 A JUROR: I'm juror number 29, my name is XXXXXX.
7 I'm 36 years old. I live in Greendale. Been married almost
8 four years now, but I've been with him since I don't know how
9 long. I got one kid, he's almost a teenager, and I got two
09:42 10 cats. Graduated Nicolet High School. I currently work as a
11 pharmacy technician. My husband works in photography. And a
12 fun fact is next month I go for my pharmacy certification test.

13 THE COURT: Wonderful and good luck to you.

14 A JUROR: Hello. I'm juror number 30. My name is
09:42 15 XXXXXX XXXXXXXXXXXX. I'm 54 years old from Kenosha. Not
16 married, no children. High school education. I'm in the food
17 service industry, and I'm a caregiver for my mother. That's
18 sometimes fun.

19 THE COURT: Thank you.

09:42 20 A JUROR: Hi. I'm juror number 32. My name is
21 XXXXXX XXXXXX. I am 44 from Sussex. I'm married, I have two
22 grown stepchildren and two geriatric cats. High school
23 graduate. I'm a kind of jack-of-all-trades for a home
24 remodeling company. My spouse works in I.T., and my fun fact
09:43 25 is I am a prolific sleep talker.

09:43 1 THE COURT: Thank you, juror number 30 -- Was that
2 32?

3 A JUROR: Yes.

4 THE COURT: Thank you, juror number 32.

09:43 5 A JUROR: I'm juror number 31. My name is XXXX
6 XXXXX. I'm 43 years old. I live in Waterford. I am married
7 with two children. I have a bachelor's degree. I'm currently
8 a private wealth adviser at U.S. Bank, my wife is a teacher.
9 And fun fact, we're taking our honeymoon 18 years late to
09:43 10 Hawaii in June.

11 THE COURT: Wonderful. It's never too late for a
12 honeymoon. Thank you all for answering those questions for --
13 for us.

14 As you listened to each other, do you know anyone on the
09:44 15 panel with you? Did you recognize any name, faces on -- of
16 each other on the panel?

17 (No response.)

18 THE COURT: All right. I do not see any hands. I do
19 have some additional questions for you. Mr. Kurzynski, is it
09:44 20 possible to get rid of the placard now so I'm able to see the
21 back clearly? Anyone have difficulty hearing or had difficulty
22 hearing us this morning so far? Anyone -- Yes, juror --

23 A JUROR: Here and there, need for people to speak
24 up.

09:44 25 THE COURT: All right. So we will be mindful to

09:44 1 always speak into the microphone. Thank you.

2 Anyone have any vision problems that may make it difficult
3 for you to see the exhibits, to see the -- We're going to use
4 the screen at times. Any vision difficulty that may be --
09:45 5 maybe make it difficult for you to participate in the trial?

6 (No response.)

7 THE COURT: Anyone have any other disability,
8 including use of medication, which might make it difficult or
9 impossible for you to serve as a member of the jury? Juror
09:45 10 number two?,

11 A JUROR: I have -- I'm on medication for
12 narcolepsy, but sometimes, rarely, it does break through.

13 THE COURT: Thank you for sharing that with us. Now,
14 I believe it was juror number 19 mentioned that he had Googled
09:45 15 about the case before --

16 A JUROR: Sorry.

17 THE COURT: I'm sorry.

18 A JUROR: Twenty-one.

19 THE COURT: Twenty-one. Thank you. Juror number 21,
09:45 20 who had mentioned Googling about the case. Anyone else Google
21 about the case before coming in this morning? Any other hands?

22 (No response.)

23 THE COURT: Anyone else heard or read anything about
24 the case before coming in this morning? I have a hand up in
09:46 25 the back. Tell me your number, please.

09:46 1 A JUROR: Twenty-nine.

2 THE COURT: Twenty-nine.

3 A JUROR: I just saw the name on the -- on the court
4 calendar, and I tried to do some Google, but I got nowhere, so
09:46 5 I just like heard the name. I don't know if that counts.

6 THE COURT: All right. Thank you for sharing that
7 with us. The reason I ask that question is that you will be
8 instructed if selected as jurors to decide the case based on
9 the evidence that you hear in this courtroom, that is presented
09:46 10 to you rather than anything else you may have learned from
11 outside of the courtroom. Anyone will have difficulty
12 following that instruction, please raise your hand.

13 (No response.)

14 THE COURT: Juror number 21, you had mentioned
09:47 15 Googling the case and learning a little bit of -- learning
16 about the case before coming in here. Would you have
17 difficulty putting out of your mind what you researched and
18 deciding this case based on the evidence presented to you here
19 in the courtroom?

09:47 20 A JUROR: I would have no problem whatsoever.

21 THE COURT: And related to that question, throughout
22 the trial I will instruct you not to Google the case, not to
23 research the case during the trial, not to research the
24 parties, the plaintiffs, the defendants, the attorneys, anyone
09:47 25 in court. Anyone would have difficulty following that

09:47 1 instruction?

2 (No response.)

3 THE COURT: Here's a harder one. During the trial I
4 will instruct you not to post any information on social media
09:48 5 regarding the case, regarding the plaintiff, the defendants,
6 the attorneys, the witnesses, issues related to the case. Any
7 of you will suffer withdrawal if I instruct you not to post
8 anything about the case while you are participating in the
9 case? Anyone?

09:48 10 (No response.)

11 THE COURT: I see no hands on that question either.
12 I will now ask plaintiffs' counsel to read for you the names of
13 the plaintiffs in this case. There are 57 individual
14 plaintiffs in this case, so please listen closely, because then
09:48 15 I will ask you whether you know of any of the names, whether
16 you are related to them or familiar with them. Miss Motley?

17 MS. MOTLEY: Your Honor, before I read the names, I
18 don't know if the court reporter would like to get all the
19 names first before I read them.

09:49 20 THE COURT: Court reporter is okay. Thank you. The
21 only thing I would ask, Miss Motley, if you would pause at
22 different intervals, that way I'll check with a group and then
23 you continue, please.

24 MS. MOTLEY: Sure. No problem. The names of the
09:49 25 plaintiffs are Andrew Aaron, Robert Agnew, Kamila Ahamad,

09:49 1 Jacqueline Bogenberger, Lavita Booker, Rebecca Wigley, Raine
2 Cich, Tahudah Cole, Taleavia Cole, Tracy Cole, Khalil Coleman,
3 Steven Conklin, Lauryn Cross, Erik Fanning, Jessica Fenner,
4 Christine Groppi, Gaige Grosskreutz, Joseph Hayes, Adante
09:50 5 Jordan, Mary Kachelski, Sean Kafer, Joseph Koepp, John Larry.

6 THE COURT: Let me ask Miss Motley to pause right
7 there. So far any of the names familiar to you or are you
8 related to anyone on the list? Juror number 16, you have your
9 hand up.

09:50 10 A JUROR: My boyfriend was a student of Sean Kafer's.

11 THE COURT: Okay. Thank you. And Ms. -- juror
12 number 16, was -- would this be an issue that would prevent you
13 or make it difficult for you to be fair and impartial?

14 A JUROR: No, I don't know him myself at all.

09:50 15 THE COURT: Okay. Thank you. Miss Motley, please
16 continue.

17 MS. MOTLEY: Thank you. Alex Larson, Sonora Larson,
18 Van Mayes, Molly Nielsen, Shawn Page, Carmen Palmer, Oscar
19 Concepcion Rodriguez, Rosalind Rogers, Madeleine Schweitzer,
09:51 20 Mariah Smith, Peter Sparks, Tiffany Stark, Angel Vega, Gabriela
21 Vitucci, Tristiana Walls, Oscar Walton, Briitta Welch, Jayden
22 Welch, Brandon Wilborn, Trisha Wilson, Katelyn Wojnar, Jill
23 Ferguson, Joanna Geisler, Christina Vitolo-Haddad, Destiney
24 Jones.

09:51 25 THE COURT: Let me pause right there to give you a

09:51 1 chance to let me know whether you recognize anyone from that
2 group of names? Anyone? Any of the names familiar to you?
3 Anyone you're related to?

4 (No response.)

09:52 5 THE COURT: All right. Thank you, Miss Motley. You
6 may continue.

7 MS. MOTLEY: Lazarito Matheu, Anne Delessio-Pason,
8 Leah Porter, Hector Rodriguez, Suzanne Wells, Sonja Worthy,
9 Nathan Sabel, Isiah Baldwin, and Rachel Dulay.

09:52 10 THE COURT: Any recognition of the names of the
11 plaintiffs that Miss Motley just read? Anyone familiar with
12 the names, related to anyone on the list?

13 (No response.)

14 THE COURT: All right. I do not see any hands up.
09:52 15 I'll ask the defendant -- I'll ask the defense to read off the
16 names of the defendants, and if you could do it slowly and I'll
17 ask the panel the same questions.

18 MS. BAYNARD: The two defendants are Dominick
19 Ratkowski and Joseph Roy.

09:53 20 THE COURT: Members of the panel, do you know either
21 of the defendants or familiar with their names, related to them
22 in any way?

23 (No response.)

24 THE COURT: I do not see any hands up. Now that
09:53 25 you've heard who the parties are, both the plaintiff and the

09:53 1 defendants, it's a good time for me to give you a short cap of
2 what this case is about. You've heard the case introduced as
3 Andrew Aaron, et al., versus defendants Ratkowski and Roy.
4 This is a civil case. For those of you who watch a lot of TV,
09:53 5 or maybe you're already familiar, you know the plaintiffs are
6 the side of the case that's bringing the lawsuit and the
7 defendants are the parties being sued.

8 In this case the claim is brought -- the claims are
9 brought under federal law called the Driver's Privacy
09:54 10 Protection Act, or you may hear us call it the DPPA for short,
11 Driver's Privacy Protection Act. The Driver's Privacy
12 Protection Act, or the DPPA, makes it unlawful for any person
13 to knowingly obtain, disclose, or use personal information from
14 a motor vehicle record for a purpose not permitted by the DPPA.

09:54 15 In this case each of the 57 plaintiffs allege that
16 defendant Ratkowski violated the DPPA by knowingly obtaining,
17 disclosing, or using personal information taken from their
18 motor vehicle records for a purpose not permitted under the
19 DPPA.

09:55 20 Each plaintiff alleges as to defendant Roy that he
21 knowingly disclosed personal information taken from their motor
22 vehicles for a purpose not permitted under the DPPA. Both
23 defendants Ratkowski and Roy deny violating the DPPA. So
24 that's who the parties are and a brief elevator pitch of what
09:55 25 the case is about.

09:55 1 I will now invite Miss Motley to read off the names of the
2 potential witnesses in this case.

3 MS. MOTLEY: The potential witnesses in this case are
4 Molly Collins, James Gutenberg, Erik Schneider, Luke Vetter,
09:56 5 Dana McCormick, Matthew Stippich, Heather Kuhl, Brian Conte,
6 James Birschbach, Jodi Borchardt, Adam Behnke, Daniel --
7 Daniel, excuse me, Carranco, Jeremy Fadness, Andrew Kwaterski,
8 Diane Nelson, John Lucas, Chris Marks, Rachael Sells, Pablo
9 Torres, John Wilke, Andrew Willis, Brian Conte, William
09:56 10 Schroeder, Katie Schuh, Sean Peterson, and Scott Wales.

11 THE COURT: Do you recognize, know, or are related or
12 familiar with any of the names that Miss Motley just read?
13 Juror number 12.

14 A JUROR: Scott Wales is an attorney; I am familiar
09:57 15 with him.

16 THE COURT: Thank you, juror number 12. I will now
17 ask the -- any other hands on the list of witnesses?

18 (No response.)

19 THE COURT: All right. And if I'm -- have my head
09:57 20 down for a second writing notes and you have an answer to a
21 question, just wave me down so that I can make sure to catch
22 you.

23 And for the defense, Ms. Baynard, can you please read the
24 name of your potential witnesses?

09:57 25 MS. BAYNARD: Yes. We just have, besides the

09:57 1 defendants it will be Luke Vetter and Shane Wrucke.

2 THE COURT: Thank you. Members of the jury, do you
3 recognize or know any of the names of these potential
4 witnesses?

09:58 5 (No response.)

6 THE COURT: I don't see any hands. During the trial
7 you may hear the name Joseph Mensah. Anyone on the panel
8 familiar, related, know the name Joseph Mensah? Juror number
9 one.

09:58 10 A JUROR: I believe he's a -- was a police officer
11 for the City of Wauwatosa.

12 THE COURT: And are you familiar with him in any
13 other way besides this information you shared with us?

14 A JUROR: Well, I -- he was a party to or accused of
09:58 15 another -- of a crime. Do you want me to elaborate on any --

16 THE COURT: I want to know -- I'm sorry. Do you
17 know him personally?

18 A JUROR: No, I do not know him.

19 THE COURT: And how do you know this information?

09:58 20 A JUROR: Through reading the newspaper.

21 THE COURT: Okay. So you're familiar with the name
22 from reading the newspaper?

23 A JUROR: Correct.

24 THE COURT: All right. Does the fact that you have
09:59 25 read of the name, Joseph Mensah, and read of -- you said of

09:59 1 things that he had been accused of, would that you -- would
2 that make you have difficulty deciding this case based on the
3 information, the evidence presented to you in this case?

4 A JUROR: No.

09:59 5 THE COURT: Will it make you -- difficult for you to
6 be fair and impartial to both sides of the case?

7 A JUROR: No.

8 THE COURT: All right. Anyone else heard, read,
9 know, familiar, related to the name Joseph Mensah? Juror
09:59 10 number 11.

11 A JUROR: I too have heard him on, like, the
12 television, in the newspaper.

13 THE COURT: Okay. So you are not related to him, you
14 do not know him personally, but you have heard the name on the
10:00 15 news; is that what you're saying?

16 A JUROR: That is correct.

17 THE COURT: So I have the exact same questions for
18 you that I asked juror number one.

19 A JUROR: Sure.

10:00 20 THE COURT: Does that fact make it difficult for you
21 to listen to the evidence and instruction in this case and
22 decide this case based on the evidence presented to you here in
23 this courtroom?

24 A JUROR: No.

10:00 25 THE COURT: All right. Thank you, juror number 11.

10:00 1 Anyone else? Did I miss anyone?

2 (No response.)

3 THE COURT: Have you or any members of your family
4 work for the City of Wauwatosa?

10:00 5 (No response.)

6 THE COURT: I don't see any hands. Anyone in here
7 work for the Wauwatosa City Attorney's Office?

8 (No response.)

9 THE COURT: Have you or any members of your family
10:00 10 ever been involved in a claim or lawsuit against a police
11 agency or police officers?

12 (No response.)

13 THE COURT: Have you or members of your family worked
14 for the Wauwatosa Police Department in any capacity?

10:01 15 (No response.)

16 THE COURT: Have you or members of your family worked
17 for any other law enforcement agency or law enforcement
18 officers in any capacity? Juror number four.

19 A JUROR: My daughter's father-in-law is a Milwaukee
10:01 20 detective, homicide.

21 THE COURT: Your daughter's father-in-law?

22 A JUROR: Yes.

23 THE COURT: Is a detective.

24 A JUROR: Yes.

10:01 25 THE COURT: Having that family relationship, would

10:01 1 that make it difficult for you to be fair and impartial to both
2 sides of this lawsuit?

3 A JUROR: No.

4 THE COURT: Thank you. I also saw a hand in the
10:02 5 back.

6 A JUROR: I have in-laws that currently work for the
7 Milwaukee County Sheriff's Department and have worked for the
8 Milwaukee Police Department.

9 THE COURT: And that's juror number 19.

10:02 10 A JUROR: Yes.

11 THE COURT: Juror number 19, having that family
12 relationship, would it make it difficult for you to be fair and
13 impartial to both sides of the lawsuit?

14 A JUROR: No.

10:02 15 THE COURT: Anyone else in the back had their hands
16 up? We'll finish in the back and we'll come back again to the
17 jury box. Juror number 23.

18 A JUROR: I have a couple of close friends that are
19 police officers and I also have one family member who is a
10:02 20 detective.

21 THE COURT: Okay. And who's the family members,
22 brother, sister?

23 A JUROR: Cousin. Close cousin.

24 THE COURT: So you have a close cousin and some close
10:02 25 friends. Juror number 23, does the fact that you have those

1 relationships would make it difficult for you to be fair and
2 impartial to both sides of this lawsuit?

3 A JUROR: No, Your Honor.

4 THE COURT: In other words are you able to decide
5 this case based on the evidence presented here to you in this
6 courtroom?

7 A JUROR: Yes, Your Honor.

8 THE COURT: All right. Please be seated. Thank you.
9 Anyone else in the back?

10 A JUROR: My father-in-law is a reserve police
11 officer in Des Plaines, Illinois.

12 THE COURT: And juror number 31 --

13 A JUROR: Correct.

14 THE COURT: -- does that relationship make it
15 difficult for you to be fair and impartial to both sides of
16 this lawsuit?

17 A JUROR: No, it does not.

18 THE COURT: Thank you. Anyone else in the back? Did
19 I miss anyone in the back? Juror number 16, we're coming back
20 to you.

21 A JUROR: One of my cousins is a drug enforcement
22 detective or something like that in Kenosha.

23 THE COURT: And juror number 16, as I've asked the
24 other panelists, would that relationship make it difficult for
25 you to be fair and impartial to both sides of this lawsuit?

10:04 1 A JUROR: No.

2 THE COURT: Thank you. Did I miss any hands in the
3 back?

4 (No response.)

10:04 5 THE COURT: All right. So I'll return back to the
6 jury box. Did I miss any hands in the jury box? Juror number
7 one.

8 A JUROR: Yes. Thank you. My brother-in-law is a
9 retired police officer from City of Menomonee Falls.

10:04 10 THE COURT: And same as I've been asking, would that
11 relationship get in the way of you being fair and impartial to
12 both sides of this lawsuit?

13 A JUROR: No.

14 THE COURT: Thank you.

10:04 15 A JUROR: I don't know if this is appropriate now, I
16 don't have any friends or relatives who are in law enforcement,
17 I'm wondering the officer you mentioned before, I think it was
18 Mensah, something like that, is he a current -- is he still an
19 officer?

10:04 20 THE COURT: Do you know the name, juror number two?

21 A JUROR: No, I don't.

22 THE COURT: Okay. And you ask that because you
23 believe you know the name?

24 A JUROR: No, I'm going on information that I've
10:05 25 learned today.

10:05 1 THE COURT: Okay. Yeah, so my question's only if you
2 know him.

3 A JUROR: No.

4 THE COURT: All right then. You've answered the
10:05 5 question. Thank you. Someone else had their hand up.

6 A JUROR: You didn't answer it.

7 THE COURT: Because I have to ask you questions, so I
8 think you sufficiently answered the questions, juror number
9 two.

10:05 10 A JUROR: Okay.

11 A JUROR: My son's a police officer for the City of
12 Sheboygan.

13 THE COURT: And that's juror number 10. And juror
14 number 10, does the fact that your son is currently a police
10:05 15 officer, would that make it difficult for you to be fair and
16 impartial to both sides of the lawsuit here?

17 A JUROR: No.

18 THE COURT: Thank you. Any other hands in the jury
19 box?

10:05 20 (No response.)

21 THE COURT: Okay. We'll move on. Have you or any
22 members of your family worked for the Department of
23 Transportation, D.O.T.? Anyone in here work for D.O.T.?
24 Number eight.

10:06 25 A JUROR: It's Milwaukee County D.O.T. at the

10:06 1 airport. I'm the accounting manager there.

2 THE COURT: Okay. Thank you. So you're the
3 accountant manager for D.O.T.

4 A JUROR: Milwaukee.

10:06 5 THE COURT: Okay. Milwaukee. Thank you. And how
6 about DMV, anyone here work for the Department of Motor
7 Vehicles or have family members who work or have worked?

8 (No response.)

9 THE COURT: All right. I don't see any hands. So
10:06 10 I've been asking about work experience. I'm going to switch to
11 ask you about your prior trial experience. Any of you have
12 served before as jurors in a case, either civil or criminal?
13 If you -- If so, raise your hand and we'll come to you. We'll
14 start first in the jury box, and then we'll make our way to the
10:07 15 back of the courtroom. Juror number one, have you prior jury
16 experience?

17 A JUROR: Yes, I served on a Milwaukee County court,
18 a criminal case involving drugs.

19 THE COURT: And can you tell me how long ago that
10:07 20 was?

21 A JUROR: It was at least four years ago. If not
22 more.

23 THE COURT: And were you the foreperson in that case?

24 A JUROR: No, I was not.

10:07 25 THE COURT: And this jury reach a verdict?

10:07 1 A JUROR: No, it did not.

2 THE COURT: So you mentioned a criminal case. This
3 is a civil case, and in a civil case the standards are
4 different. In a civil case the burden of proof will be
10:07 5 preponderance of the evidence, which I will talk about more,
6 and in a criminal case it's actually the highest standard we
7 have in law, which is beyond a reasonable doubt. I just wanted
8 to point that out now that you've mentioned that you served on
9 a criminal case.

10:07 10 Anyone else have prior jury experience? Well, I forgot to
11 ask you, juror number one, if you could give her the microphone
12 again. The fact that you've served on a jury before, would
13 that influence whether you are able to be a fair and impartial
14 juror in this case?

10:08 15 A JUROR: It wouldn't influence me. In other
16 words -- I'm sorry, go ahead.

17 THE COURT: Did you have, I don't know, an experience
18 such that it left a bad taste about jury service in your mouth
19 that you could not be fair and impartial to both sides of this
10:08 20 lawsuit?

21 A JUROR: No. It was an interesting experience.

22 THE COURT: Thank you. The next person in the jury
23 box to have prior jury experience?

24 A JUROR: Yes. Juror experience about 20 years ago,
10:08 25 and it was a criminal case with Milwaukee County.

10:08 1 THE COURT: Okay. And were you the foreperson in
2 that case?

3 A JUROR: No.

4 THE COURT: And was the jury able to reach a verdict?

10:08 5 A JUROR: Yes.

6 THE COURT: And same question I asked your colleague,
7 number one, would the experience having served before, has it
8 left a bad taste in your mouth such that it would make it
9 difficult for you to be fair and impartial to both sides of
10:09 10 this lawsuit?

11 A JUROR: No, it was very interesting. I enjoyed it.

12 THE COURT: Thank you. I believe, juror number six,
13 you have your hand up?

14 A JUROR: I was a juror on a criminal case in
10:09 15 Milwaukee County, I believe it was 2019.

16 THE COURT: And were you the foreperson in that case?

17 A JUROR: No.

18 THE COURT: And did the jury reach a verdict?

19 A JUROR: Yes.

10:09 20 THE COURT: And same, anything from that experience
21 would make it difficult for you to be fair and impartial to
22 both sides of this lawsuit?

23 A JUROR: No.

24 THE COURT: Okay. Thank you, juror number six.

10:09 25 Juror number 12?

10:09 1 A JUROR: Yes. I was on a jury about 30 years ago,
2 criminal case, yes, I was the foreperson, we reached a verdict,
3 and I can be fair and impartial.

4 THE COURT: Thank you, juror number 12. Anyone else
10:09 5 in the jury box with prior jury experience?

6 (No response.)

7 THE COURT: Okay. We'll move to the back now.

8 A JUROR: I was just on a court case two weeks ago.

9 THE COURT: And juror number twenty --

10:10 10 A JUROR: Two.

11 THE COURT: 22. Thank you. Especially in the back,
12 it's helpful to us if you tell me what number you are so I can
13 take my notes. Okay. So that was just two weeks ago. Was it
14 a criminal trial or civil trial?

10:10 15 A JUROR: It was a child abuse trial.

16 THE COURT: I'm sorry, it was a?

17 A JUROR: Child abuse trial.

18 THE COURT: A criminal trial?

19 A JUROR: Yes.

10:10 20 THE COURT: Okay. And were you the foreperson?

21 A JUROR: No.

22 THE COURT: Okay. Anything from that very recent
23 experience would make it difficult for you to be fair and
24 impartial to both sides of this lawsuit?

10:10 25 A JUROR: No.

10:10 1 THE COURT: Thank you. Other hands in the back?

2 A JUROR: I was on a criminal trial for the jury for
3 a criminal trial about 14 years ago in Milwaukee County.

4 THE COURT: And that is juror number 19?

10:11 5 A JUROR: Nineteen. Sorry.

6 THE COURT: Juror number 19. And I'm sorry, how many
7 years ago?

8 A JUROR: Fourteen.

9 THE COURT: Okay. And was it -- you said it was a
10:11 10 criminal case?

11 A JUROR: Yup.

12 THE COURT: And did -- were you the foreperson?

13 A JUROR: I was not.

14 THE COURT: Did your jury reach a verdict?

10:11 15 THE CLERK: Yup.

16 THE COURT: Anything from that experience would make
17 it difficult for you to be fair and impartial to both sides of
18 this lawsuit?

19 A JUROR: Nope.

10:11 20 THE COURT: Thank you. Anyone else in the back here
21 with prior jury experience?

22 A JUROR: Juror number 30. I was on a case about 20
23 years ago in Kenosha. On the jury.

24 THE COURT: And was it a civil --

10:11 25 A JUROR: Criminal case.

10:11 1 THE COURT: Okay. And were you the foreperson?

2 A JUROR: No, I was not.

3 THE COURT: And was your juror -- jury able to reach
4 a verdict?

10:11 5 A JUROR: Yes.

6 THE COURT: And anything from that experience would
7 make it difficult for you to be fair and impartial to both
8 sides of this lawsuit?

9 A JUROR: No, not at all.

10:12 10 THE COURT: Okay. Thank you. Any other hands on
11 this question in the back of the courtroom?

12 (No response.)

13 THE COURT: All right. My next question is about
14 lawsuits. Have any of you or your immediate family members
10:12 15 participated in a lawsuit in any capacity, whether you were the
16 party, person being sued, or whether you were -- whether you
17 were suing or being sued, whether you were a witness, an
18 expert, participated in any kind of capacity in a prior
19 lawsuit? Please raise your hand.

10:12 20 A JUROR: My brother-in-law was, now deceased, was an
21 expert witness on a, what's it called, it was some kind of
22 chemical agent that was harmful to workers. It wasn't
23 asbestos, but it was something where he had to be all the
24 time --

10:12 25 THE COURT: Sure. Juror number two, how long ago

10:12 1 that was? Approximately.

2 A JUROR: I don't know, I would say at least three,
3 if not longer.

4 THE COURT: Okay. Did you learn anything from your
10:13 5 brother's experience that would make it difficult for you to be
6 fair and impartial -- fair and impartial to both sides of this
7 lawsuit?

8 A JUROR: I don't think so.

9 THE COURT: Okay. Thank you. Anyone else in the box
10:13 10 with prior lawsuit experience in any capacity?

11 (No response.)

12 THE COURT: All right. I -- Let's go to the back.
13 And please identify by number, please.

14 A JUROR: Number 20. My dad's company was sued
10:13 15 civilly for a injury that occurred with some of the equipment
16 they make probably 25 years ago.

17 THE COURT: Anything you learned from that
18 experience, juror number 25, that would make it difficult for
19 you to be fair and impartial to both sides of this lawsuit?

10:13 20 A JUROR: I was juror 20. No. I don't think so.

21 THE COURT: That is juror number 20?

22 A JUROR: Correct.

23 THE COURT: Okay. Thank you for the correction.
24 Anyone else in the back?

10:14 25 A JUROR: Number 19. My husband sued a former

10:14 1 employer for payment.

2 THE COURT: Approximately how long ago that was?

3 A JUROR: Fifteen years.

4 THE COURT: Okay. And anything from that experience
10:14 5 would make it difficult for you to be fair and impartial to
6 both sides of the lawsuit?

7 A JUROR: No.

8 THE COURT: Okay. Anyone else in the back?

9 A JUROR: Number 26, Your Honor. I was sued in small
10:14 10 claims court in 1996, and that was for a auto accident. The
11 guy in the other part of the accident was suing his own
12 insurance company, which was mine.

13 THE COURT: Thank you, juror number 26. Anything
14 from that experience would make it difficult for you to be fair
10:14 15 and impartial to both sides of this lawsuit?

16 A JUROR: No.

17 THE COURT: Okay. Thank you. Any other hands in the
18 back there? I see one more hand.

19 A JUROR: Juror number 31. I was a witness
10:15 20 representative for a former company of mine who was being sued
21 by a former employee. This was about eight years ago.

22 THE COURT: Did you learn anything from that
23 experience, from that participation that would make it
24 difficult for you to be fair and impartial in this lawsuit?

10:15 25 A JUROR: No, I did not.

10:15 1 THE COURT: Okay. All right. Did I miss anyone on
2 this question?

3 (No response.)

4 THE COURT: I do not see any hands. My next question
10:15 5 is, you will hear during the trial that the plaintiffs were
6 demonstrating against or protesting police misconduct and/or
7 violence. Do you hold any negative views of citizens who
8 protest police misconduct and/or violence? Anyone in the panel
9 have any negative views of individuals who demonstrate or
10:15 10 protest against police misconduct or violence?

11 (No response.)

12 THE COURT: Have you or any close members of your
13 family or friends participated in demonstrations or protests
14 regarding police issues, either in support of or against police
10:16 15 conduct? Anyone participated themselves? We'll start in the
16 jury box, and then we'll come to you in the back.

17 A JUROR: I don't know if -- This is something where
18 I could be there or make a donation toward?

19 THE COURT: Yes, let's include donations as well.
10:16 20 That's -- Okay.

21 A JUROR: Yeah. I --

22 THE COURT: Okay. And you made a donation toward?

23 A JUROR: Towards Black Lives Matter.

24 THE COURT: Okay. Thank you. Anyone else? Again,
10:16 25 participated or donated.

10:16 1 A JUROR: My sister's participated in the Black Lives
2 Matter's march. Juror number five.

3 THE COURT: Thank you.

4 A JUROR: I participated in a Black Lives Matter
10:17 5 march here in Milwaukee.

6 THE COURT: Thank you. That's juror number six.

7 A JUROR: Juror number 14. I had the right -- the
8 Black Lives riots in Waukesha go past my house, and I had
9 property damage from it.

10:17 10 THE COURT: Thank you. So before I go to the back, I
11 do have questions for those of you who raised your hand in the
12 jury box. As you will hear, you anticipated my next questions,
13 like you're reading my list here. A couple of you mentioned
14 Black Lives Matter movement or protests. Now, does any of you,
10:17 15 the facts that you've mentioned that would it prevent you from
16 being fair and impartial to both sides of the lawsuit if people
17 were either participating, in favor, or against Black Lives
18 Matter?

19 A JUROR: No.

10:18 20 THE COURT: First number two, who had raised your
21 hand?

22 A JUROR: Yeah, I think that it's instinct for a lot
23 of people to automatically believe the law enforcement
24 position -- the situation, and I would just -- trying to be
10:18 25 weary on both sides.

10:18 1 THE COURT: Okay. And so what you're saying is that
2 you would keep an open mind to both sides of the evidence; is
3 that what you're saying?
4 A JUROR: Yeah.

10:18 5 THE COURT: Okay. Thank you. And juror number five?
6 A JUROR: No.
7 THE COURT: Okay.
8 A JUROR: I would be impartial.

9 THE COURT: So what you -- you're saying is the fact
10:18 10 that I believe you said you participated; is that correct?
11 A JUROR: Yes.
12 THE COURT: Would not prevent you from being fair and
13 impartial to both sides of the lawsuit?
14 A JUROR: Correct.

10:18 15 THE COURT: And thank you. Juror number six, same
16 question --
17 A JUROR: Yes.
18 THE COURT: -- for you.
19 A JUROR: I would be okay with that. It would not
10:19 20 prevent me.
21 THE COURT: It would not prevent you from being fair
22 and impartial to both sides of the lawsuit?
23 A JUROR: Yes.
24 THE COURT: And juror number 14, you had shared that
10:19 25 property damage and some protests near you residence, again, as

10:19 1 I indicated, that some of the plaintiffs or the plaintiffs were
2 protesters. Would that fact of -- that experience you had
3 personally prevent you from being fair and impartial to both
4 sides hearing the evidence in this case?

10:19 5 A JUROR: I would say it could, just because it
6 personally affected my family.

7 THE COURT: All right. Thank you for answering the
8 question.

9 So let's move to the back and the same question, and the
10:19 10 question was, any of you or close members, family or friends
11 participated in protests either in support of or against
12 police-related issues? And that includes donations as well.
13 Number 16.

14 A JUROR: I have personally participated in multiple
10:20 15 protests in Milwaukee, and my boyfriend, he also filmed a
16 majority of some of the protests that took place in Milwaukee
17 County.

18 THE COURT: Thank you. And let me ask you this.
19 Having yourself participated and you have a boyfriend who
10:20 20 filmed, would you be able to set aside your personal
21 experiences to decide this case based on evidence presented to
22 you and the law as I instructed you?

23 A JUROR: Yeah, I would definitely be able to put my
24 personal opinions aside.

10:20 25 THE COURT: Thank you. Still in the back on this

10:20 1 question. Number 19.

2 A JUROR: I've participated in pro BLM rallies in
3 Waukesha and Milwaukee County.

4 THE COURT: And same as I've been asking your
10:21 5 colleagues, the fact of your participation, would that get in
6 the way of you listening to the evidence as presented to you in
7 this courtroom and being fair to both sides of the lawsuit?

8 A JUROR: No, I don't think so.

9 THE COURT: Any other hands up on the question?

10:21 10 A JUROR: Number 20. My company's made various small
11 donations to local police and fire around by us.

12 THE COURT: Thank you, number 20. Same as I've asked
13 the other -- your other colleagues.

14 A JUROR: No, it wouldn't.

10:21 15 THE COURT: The fact that you've made these
16 donations, would it prevent you from listening to the evidence
17 in the courtroom and deciding the case based on the evidence?

18 A JUROR: No, it wouldn't affect my judgment.

19 THE COURT: Thank you. Any other hands in the back?
10:21 20 Participated, donated? Did I miss anyone?

21 (No response.)

22 THE COURT: I don't think so. I'll move on.

23 Anyone on the panel experience a situation where you
24 believe that your personal information was improperly obtained,
10:22 25 used, or disclosed? Anyone have had experience with personal

10:22 1 information being improperly obtained, used, or disclosed?

2 Juror number two, juror number eight.

3 A JUROR: I'm wondering is that like identity theft?

4 THE COURT: It could be. However way you want to
10:22 5 answer that.

6 A JUROR: Yeah, I've been involved with two years of
7 our federal tax return, we haven't gotten a refund yet, and
8 there was something with Social Security number somebody else
9 used and filed. It's the biggest mess and I spent hours and
10:22 10 hours just waiting to get somebody to talk to, and still in the
11 process.

12 THE COURT: Well, I'm sorry you've had this
13 experience.

14 A JUROR: Not about the money, just the --

10:23 15 THE COURT: Yes.

16 A JUROR: So I'm hoping they are a little bit higher
17 than the people, that -- that -- that would be great.

18 THE COURT: Well, as I had mentioned in the very
19 short introduction about the case, this case is about personal
10:23 20 information, so with you having had this experience, would that
21 prevent you from being fair and impartial to both sides of the
22 lawsuit?

23 A JUROR: Well, I don't really understand what the
24 two sides are -- Because is it a corporation?

10:23 25 THE COURT: Well, you will hear more once the

10:23 1 attorneys introduce the case, but you have the short version
2 that I just gave you, and -- and you raise a -- you know, a
3 good question, you don't know yet, right, and so my question to
4 all of you, are you willing to have an open mind to hear the
10:24 5 evidence on both sides and make a decision based on the
6 evidence presented to you?

7 A JUROR: Yes, ma'am.

8 THE COURT: All right. I believe, number eight, you
9 had your hand up, and, again, to refresh, the question we're
10:24 10 talking about, experience with having your personal information
11 improperly obtained, used, or disclosed.

12 A JUROR: Yes, I've had a couple times my credit card
13 was used, once was like over \$10,000 to buy All Star tickets to
14 the NBA All Star Game. Another time it was just at a local
10:24 15 store.

16 THE COURT: Okay. And, again, would having that not
17 so good experience, will it make it difficult for you to be
18 fair and impartial to both sides of this lawsuit?

19 A JUROR: No, it wouldn't be difficult. No.

10:24 20 THE COURT: Thank you. Anyone else in the jury box
21 regarding the personal information question?

22 A JUROR: Hi. I don't know if it's relevant. My
23 sister recently was scammed and had some personal information
24 and some money issues because of it.

10:25 25 THE COURT: All right. And would that experience,

10:25 1 from what you learned from your sister, unpleasant experience,
2 would that make it difficult for you to be fair and impartial
3 to both sides of the lawsuit?

4 A JUROR: No.

10:25 5 THE COURT: Okay. Thank you.

6 A JUROR: Number 13. I also had credit card
7 information leaked and was misused.

8 THE COURT: Okay. I'm also sorry for that experience
9 for you. Would that personal experience make it difficult for
10:25 10 you to be fair and impartial to both sides of the lawsuit?

11 A JUROR: No.

12 THE COURT: All right. Did I miss any hands?

13 A JUROR: Juror number 14. My mother-in-law was
14 scammed, and unfortunately ended up causing her to declare
10:25 15 bankruptcy, and our bank account during that same time was
16 cleaned out.

17 THE COURT: Oh, I'm sorry about that experience. You
18 know my follow-up question, that's a terrible thing to happen
19 to you and your mother-in-law, but would that experience make
10:26 20 it difficult for you to be fair and impartial to both sides of
21 the lawsuit in this case?

22 A JUROR: No.

23 THE COURT: Thank you. Going to the back now on this
24 question. Any hands in the back on this question? Personal
10:26 25 information question?

10:26 1 (No response.)

2 THE COURT: All right. If I didn't miss anyone, I
3 will move on to the next question. I had mentioned earlier
4 that during the trial I will instruct you not to do research,
10:26 5 but I also want to highlight for you that during the trial I
6 will instruct you not to go investigate on your own the issues
7 or the attorneys, the parties, the witnesses. Anyone would
8 have difficulty with that question -- with that instruction?

9 (No response.)

10:27 10 THE COURT: No hands up on that. Now, during the
11 trial, this goes back to conversation I had earlier about
12 keeping an open mind, during the trial I will be instructing
13 you not to talk to each other about the case, and the reason
14 for that is that we want you to wait to have all the evidence
10:27 15 and all the instructions and to formally turn the baby over to
16 you before you can start deliberating on the case. Anyone
17 would have difficulty holding off, talking about the case even
18 with each other until you've received all the evidence, all the
19 instruction? Anyone would have problem with that?

10:27 20 (No response.)

21 THE COURT: Anyone on the panel who because of any
22 particular feelings about the judicial system, including about
23 judges and lawyers, would not be able to serve as impartial and
24 fair jurors in this case? Any feelings you have about the
10:28 25 legal system that would get in the way of you being fair to

10:28 1 both sides?

2 (No response.)

3 THE COURT: As jurors your job will be the judges of
4 the facts, that is, you will determine the facts in this case.

10:28 5 Is there any member of the jury, if selected, would not be able
6 to render a verdict solely on the evidence consisting of the
7 testimony and exhibits presented to you during the trial?

8 (No response.)

9 THE COURT: Again, as judges of the facts, you may
10:28 10 have to make credibility determinations. Is there any one of
11 you who believe that a police officer or law enforcement
12 witness should automatically be believed over a lay witness or
13 non-police witness?

14 (No response.)

10:29 15 THE COURT: The flip side of that question, any one
16 of you serving as judges of the facts would believe that police
17 officers are generally untruthful?

18 (No response.)

19 THE COURT: Is there any one of you who would not
10:29 20 follow the instructions that I will give you during the trial
21 and at the conclusion of the trial, whether you agreed, so I
22 might give you an instruction, you're like, oh, I don't like
23 that one, but you would have to follow it anyway. Anyone would
24 have a problem doing that?

10:29 25 (No response.)

10:29 1 THE COURT: Any of you have a problem accepting the
2 law as I give it to you regardless of your opinion or any
3 notions that you had about the law prior to coming into the
4 courtroom?

10:29 5 (No response.)

6 THE COURT: We're wrapping up now. Has any of you
7 experienced anything in life that you believe, and only you
8 know this, that you believe would affect your ability to serve
9 as a fair and impartial juror to both sides of this lawsuit?

10:30 10 (No response.)

11 THE COURT: Any member of the panel hold any
12 religious, philosophical, or moral beliefs which would make it
13 difficult or preclude any of -- preclude your ability to serve
14 as a fair and impartial juror in this case?

10:30 15 (No response.)

16 THE COURT: Any one of you have any pressing personal
17 or business matters on your mind that would make it difficult
18 for you to give this case your 100 percent attention?

19 (No response.)

10:31 20 THE COURT: Okay. Last call. Okay. Any of you know
21 any reason whatsoever that I did not touch upon that would make
22 it difficult for you to sit and decide the case again fairly
23 and impartially to both sides? Juror number two.

24 A JUROR: Question. What if we have lost our faith
10:31 25 in the Supreme Court?

10:31 1 THE COURT: Well, this is not the Supreme Court, as
2 you know, so maybe that answers the question. As I opened voir
3 dire introduction this morning, you know, serving as jurors is
4 one of the privileges that we have as citizens, and having you,
10:31 5 members of our community, come in and you get to be judges of
6 the facts, during the duration of the trial, that's an
7 important privilege as a citizen and important to our legal
8 system.

9 All right. So I want to take a quick break to check in
10:32 10 with the lawyers. While I'm doing that, you have been sitting
11 and listening to me for awhile now, so get up, stretch, do your
12 yoga pose in your seat while I check in with the lawyers.

13 Counsel, if you'll please approach.

14 (The following discussion was held at sidebar.)

10:33 15 MS. BAYNARD: One of the questions I have, and -- was
16 the question that says this trial's going to take five days.
17 Is there anybody who --

18 THE COURT: I forgot that. Yes. Thank you.

19 MS. BAYNARD: It --

10:33 20 THE COURT: Yes. That's the purpose of holding --
21 Have I missed anything? Anything else? Get us started?

22 MS. BAYNARD: Not that I can think of.

23 THE COURT: Anything from you that was missed?

24 MR. SCHWAB: I would say one thing that I want to ask
10:34 25 about is the police officers, the Police Association that is --

10:34 1 kind of came out through one, there was an ask, you know, the
2 question about if you participated in the protest expanded to
3 if you donated to this movement, if somebody was at the -- to
4 see if anyone else has Police Athletic Association cards,
10:34 5 anything like --

6 THE COURT: About cards?

7 MR. SCHWAB: Donated to police benevolent
8 associations, things like that.

9 THE COURT: Open up the question about --

10:34 10 MR. SCHWAB: If I don't know if it was clear on the
11 donation side relating to police departments.

12 THE COURT: Okay.

13 MR. SCHWAB: Things like fund-raisers, like things
14 like that. I wasn't expecting the woman, number two said
10:34 15 something about donating to BLM. I don't know that that time
16 crossed that donations in general in support would be part of
17 that.

18 THE COURT: Okay. Anything else?

19 MS. BAYNARD: Can I just use the --

10:35 20 (The sidebar discussion ended.)

21 THE COURT: All right. We are back on the record.
22 Just checking that our court reporter is ready for me.

23 All right. We are back on the record, and checking my
24 notes, I have two additional questions for you. One, I believe
10:36 25 someone in the back, juror number 20, mentioned donating to the

10:36 1 police, and I did not ask if anyone else made any donations to
2 any police organizations? Police or law enforcement
3 organizations or related to law enforcement organizations.

4 (No response.)

10:36 5 THE COURT: All right. I do not see any hands up.
6 And then my final question that I forgot to ask you is that
7 this case will take five days, I know I think, juror number
8 six, you mentioned a vacation. This case will take five days
9 to be presented to you, so this work week. Does that fact make
10:36 10 it difficult for anyone to serve as fair and impartial jurors
11 in this case? Anyone will have a problem with the five-day
12 commitment?

13 (No response.)

14 THE COURT: All right.

10:37 15 MR. WIRTH: Do not see any hands on that. All right.
16 This is a good -- Yes, juror number 15?

17 A JUROR: Yes, I -- will we be done by Friday?

18 THE COURT: Five days, Friday.

19 A JUROR: Friday.

10:37 20 THE COURT: Yes, five days.

21 A JUROR: Be complete before this weekend?

22 THE COURT: Yes, five days is the timeline for the
23 trial. All right. That's for the presentation to you.

24 A JUROR: Okay.

10:37 25 THE COURT: All right. Any other hands on that? All

10:37 1 right. So you have been sitting well, so this is a good time,
2 let's take a -- I'm going to give you a quick morning break of
3 about 10 minutes, and I need to address with the lawyers, and
4 then we'll get back on the record.

10:37 5 THE BAILIFF: All rise for the jury.

6 (The jury was excused.)

7 THE COURT: All right. Please be seated. I want to
8 quickly address any -- I want to quickly address any requests
9 to strike for cause. From the plaintiffs?

10:39 10 MR. SCHWAB: Yes, Your Honor. We have two. Number
11 14, she indicated that she didn't know if she could be
12 impartial based on her own experiences. I think that given her
13 own personal experiences, I mean, I know I personally would --
14 it would be difficult for me to set that aside.

10:39 15 THE COURT: Okay. Say no more, Mr. Schwab. I agree
16 that number -- juror number 14 did say she would have a
17 difficult time being fair and impartial in this case, so I will
18 strike her for cause.

19 MR. SCHWAB: And number 10. He indicated that his
10:39 20 son is a police officer, I'm not saying that any relationship
21 to a police officer, there are many people obviously who have
22 cousins, who have in-laws, who have brother-in-law's,
23 father-in-law, child's [sic], spouses, parents. I'm not saying
24 that any connection to police officers, but a son, that kind of
10:40 25 direct family relation, that's very close and I have some

10:40 1 serious concerns about the ability for that juror to be
2 impartial as well.

3 THE COURT: Okay. Thank you. Regarding number 10, I
4 do wish to -- I will hear from the other side on that.

10:40 5 MS. BAYNARD: I guess, Your Honor, what I think the
6 issue would -- if it's the fact that he has a son that is in
7 law enforcement, I mean, he was asked the same question, would
8 you be able to decide the case fairly, he said yes. I think
9 kind of the flip side of that is also the individuals who all
10:40 10 said participated. It's not just I don't have negative
11 feelings towards Black Lives Matter movement, it's I've
12 actively participated in this, so I guess I would ask if we're
13 striking number 10 because his son is a police officer that we
14 would also, the Court would consider striking any of the
10:41 15 individuals who not only just participated in these protests.

16 THE COURT: All right. So let me first address
17 number 10. Let me just reserve on number 10 after I address
18 the -- any other strikes and see what we have left here. I
19 don't think just having a relative is -- police officer, even a
10:41 20 son, is for cause, cause ground here. Clearly, like the person
21 had said, hey, I can't be fair and impartial, we want her out
22 of here, but just having a son who's a police officer I don't
23 think -- I'm not sure that's grounds.

24 MR. SCHWAB: And I would only ask that you conduct
10:41 25 some further voir dire on that one issue. I agree that it's

10:41 1 more of a I don't know yet, and I wanted to call that
2 attention. I think that that is a relationship that requires a
3 little more, and I would not say it's analogous to people who
4 participated or support a political movement, this is, my son
10:42 5 is similarly situated to a defendant, and I think that's a
6 little different, my son is, you know --

7 So I'm not -- I would ask at least that you conduct a
8 little further voir dire on the question of whether he can put
9 those feelings aside. A simple yes is, I think, maybe
10:42 10 superficial.

11 THE COURT: Okay. Thank you. I thought I had asked
12 follow-up with the people who had relationships. Did I miss
13 number 10, Mr. Schwab?

14 MR. SCHWAB: I'm just -- I would ask for a further
10:42 15 in-depth, not just, you know, beyond can you be impartial, you
16 know, but I -- I'll defer to the Court.

17 THE COURT: Okay. Thank you. All right. So these
18 were the two for -- from the plaintiff. Number 14 is stricken
19 for cause. From the defense, any motions for strikes?

10:43 20 MS. BAYNARD: I guess with two points of
21 clarification before I use a strike.

22 THE COURT: Excuse me. I didn't mean for strike, for
23 cause. We're still in cause.

24 MS. BAYNARD: Oh, okay, for cause.

10:43 25 THE COURT: You don't have to share your strikes with

10:43 1 me.

2 MS. BAYNARD: I'm thinking that number two with her
3 testimony regarding the hearing issue and the narcolepsy, and
4 just some of her answers in general, might be a reason why she
10:43 5 should not be participating on the jury.

6 THE COURT: All right. The plaintiff wish to be
7 heard?

8 MR. SCHWAB: I didn't hear anything about hearing,
9 and she was awake and alert and said that she's on medication.
10:43 10 I think that's a disability issue. If we're going to strike
11 people because of disabilities, you know, I -- she said that
12 she takes medication for it, to address that issue, and she
13 never made any indication that she couldn't be impartial. She
14 has political beliefs, everyone has political beliefs. As long
10:43 15 as they can set those aside and be fair and impartial and she,
16 in fact, volunteered that she -- that she would really do --
17 make a good effort and she believes that both sides should be
18 heard, so I think that based on her extensive description of
19 her own state of mind, she proved to be a capable juror. But
10:44 20 again, from the medication standpoint, she said she takes this
21 medication, and she was very forthright about it, didn't say
22 that she falls asleep frequently, and like I said, she's been
23 alert this whole time.

24 THE COURT: Thank you. With the hearing, she did say
10:44 25 difficulty, but it was -- I think it was a microphone and

10:44 1 speaking up issue, so once we started speaking up, she did not
2 show any difficulty hearing us.

3 On the medication issue, however, she did say she does
4 take medication, but she said something that sometimes there
10:44 5 are breakthroughs, I forgot the exact word, but she did say
6 breakthrough. This is a five-day trial, and it's going to be a
7 hectic schedule, so as a matter of precaution, not risking
8 medication issues, I will strike her for cause.

9 Any others?

10:45 10 MS. BAYNARD: And I just want the record to be very,
11 very clear that nothing to do with attorney Schwab's kind of
12 backhand comment we're striking people for their disabilities.
13 That has absolutely nothing to do with it.

14 THE COURT: I'm not striking her for her
10:45 15 disabilities. People on medication can serve, as long as it
16 does not interfere with any, you know, possibility of not being
17 able to hear. So if she said, you know, I take medication,
18 it's under control, but she did pause and say there are some
19 breakthroughs. It's the breakthroughs that I'm concerned
10:45 20 about.

21 MR. SCHWAB: And I understand, and it wasn't intended
22 as a backhanded anything. It was just a recognition that
23 disease is a disability.

24 THE COURT: Yes.

10:45 25 MR. SCHWAB: Narcolepsy would be properly understood

10:45 1 as a disability and at least should be acknowledged in that
2 context, but it wasn't a backhanded. I understand. Thank you,
3 Your Honor.

10:46 4 THE COURT: I understand. Any other motion for
5 cause?

6 MS. BAYNARD: I wasn't sure with number six. She
7 said she had a vacation, she was going to be gone Friday and
8 Monday? And then when you asked the follow-up I heard about
9 number six, is anybody going to be gone, I don't know if she
10 meant, well, you've already acknowledged that, number six, I
11 would be out on Friday through Monday? But that was my only
12 other kind of note.

10:46 13 THE COURT: Okay. So we will need her on Friday, so
14 I understood that her trip starts on Friday, so I will strike
15 her for cause just in case she needs to get going on her trip
16 on Friday.

17 MR. SCHWAB: Your Honor, before we go there, I'd ask
18 that we question her about it. She was asked specifically and
19 she said she had no reason. We don't know what time she leaves
20 on Friday; perhaps she leaves on Friday at 10:00 p.m. So at
21 least before we strike her I think we should inquire further
22 into it because she was asked if she could make the schedule,
23 and she didn't -- and she didn't raise her hand and say I can't
24 do that.

10:46 25 THE COURT: Okay. So because we have plenty, we're

10:47 1 not starving for jurors, I'm just going to go ahead and strike
2 her for cause, because she did, even before I got to the end,
3 anyone have -- five days, she had volunteered it very early on.
4 I think she stated, I want you to know that I have this trip
10:47 5 planned, so it seems to be something on her mind, so I will
6 release her from service.

7 Anyone else? Any other requests for strikes?

8 MS. BAYNARD: Your Honor, one more, and I don't even
9 know if we'll get to this point because he's so far into the
10:47 10 alternates, but the individual who said he Googled the case, he
11 tried to learn about it before coming here today, I believe
12 that was number 21. I think there was another female even
13 farther back who probably also wouldn't make it into the box,
14 but number 29 said she saw the name on the court calendar and
10:47 15 tried to Google it but couldn't find anything. So I think that
16 could be -- he seemed proud of the fact that he did research
17 about the case before coming here, so I think that would be a
18 reason for him not to sit in the jury box.

19 THE COURT: The plaintiffs wish to be heard on that
10:48 20 concern?

21 MR. SCHWAB: He was asked if he could be impartial,
22 and he said yes. I -- I don't think that he's violated any
23 rules, he said he would not, but I think he agreed that he
24 wouldn't research further if he makes his way to the panel. I
10:48 25 think it is probably not a likely concern, and we can put it

10:48 1 off to the side, but he said he could be impartial, and, you
2 know, I was told that an officer -- the father of a police
3 officer who says he could be impartial, we'll trust that, so I
4 think we can trust him as well.

10:48 5 THE COURT: As to the officer, I said I didn't
6 comment whether we could trust him or not, my concern was
7 whether just the fact of having a son or a spouse or someone.

8 MR. SCHWAB: And I apologize. I didn't mean trust,
9 but just merely that the follow-up inquiry was, can you be
10 impartial? If he says yes, then we're okay. I would say, you
11 know, same applies to Mr. -- to number 21.

12 THE COURT: Okay. Thank you. All right. So
13 Googling or doing investigation on the case is a concern of the
14 Court as reflected in a number of questions and ways that I
10:49 15 asked about Googling social media. We want people who are just
16 focusing on the evidence presented in this courtroom to them.
17 Given that we are not again starving for jurors, we have a big
18 panel, I will go ahead and strike number 21. Anyone else? Any
19 other requests for cause?

10:49 20 MS. BAYNARD: Nothing from the defense, Your Honor.

21 MR. SCHWAB: One moment -- One moment, Your Honor.
22 May I review my notes?

23 THE COURT: Yes.

24 (There was discussion off the record.)

10:50 25 MR. SCHWAB: You know, it wouldn't -- I don't know

10:50 1 that it would be appropriate at this time, but I will say just
2 watching number nine, he didn't seem to be engaged in -- in the
3 process, and I have some concerns about his willingness to
4 remain engaged, inability -- or maybe ability, maybe just
10:50 5 willingness. I don't know if you want to hear that for cause,
6 but number nine was -- seemed to be disengaged from the
7 process.

8 THE COURT: Mr. Schwab, when you say disengaged, you
9 didn't see him falling asleep or anything, because I was
10:51 10 watching for that.

11 MR. SCHWAB: No. No, just, I don't know if I -- to
12 me it appeared that he was either distracted or not listening
13 at various times.

14 THE COURT: Okay. Thank you. I hear you, I'm always
10:51 15 on the watch for people who are falling asleep, and because we
16 definitely don't want that. I trust your observations,
17 Mr. Schwab, but I don't know that's a basis to strike him for
18 cause. He answered all the questions, so it's not that he was
19 not paying attention to questions being answered.

10:51 20 MR. SCHWAB: Okay. Thank you.

21 THE COURT: But thank you for raising that. If the
22 parties don't have anyone else, the person I want to raise is
23 juror number one, who says that she knows Miss Knowlton
24 through --

10:52 25 MS. KNOWLTON: Miss Motley.

10:52 1 MS. MOTLEY: She didn't say she knows me.

2 THE COURT: No, Knowlton I said. I'm sorry.

3 Knowlton, yes, she said she knew Miss Knowlton.

4 MS. BAYNARD: She said Motley.

10:52 5 THE COURT: She said Motley?

6 MS. MOTLEY: She didn't say she knows me, she said
7 had heard about me.

8 THE COURT: Okay. Something -- I thought she
9 mentioned something too about, knows your reputation from

10:52 10 university system is what I noted. And some professional
11 capacity. I don't mean that she knows you from the news or --

12 MS. MOTLEY: Right.

13 THE COURT: I thought she had indicated professional
14 capacity.

10:52 15 MS. MOTLEY: Your Honor, the way that I understood
16 what she was saying is I'm an alumni of UW-Milwaukee, so, you
17 know, that's out there. That's the school I graduated from.

18 THE COURT: Got it.

19 MS. MOTLEY: And that is what I understood.

10:52 20 THE COURT: Got it. I wanted to make sure it wasn't
21 a professional relationship through something or another.

22 MS. BAYNARD: Your Honor, I just want it to be clear
23 she referred to attorney Motley as a renowned lawyer who she
24 knew of because they worked at -- and I'm not saying they
10:53 25 worked together, but it wasn't just, I read about her in the

10:53 1 news, so --

2 THE COURT: Okay.

3 MS. BAYNARD: Not sure if the court reporter can
4 search the term.

10:53 5 THE COURT: Yeah, I did make a note of wanting to
6 know about the professional relationship, because she made it
7 sound it was a professional -- not personal, but somehow
8 professionally she knew you.

9 MR. SCHWAB: And I understood it to be just I've
10:53 10 heard of her. You know, renowned wouldn't be like my friend is
11 a renowned person, renowned would be I've heard of through the
12 news or something, and that's not personal, that's not
13 professional, and like Miss Motley said, that's the educational
14 component, that's just where she went to school.

10:53 15 THE COURT: Okay. Thank you. All right.

16 MS. BAYNARD: I guess, Your Honor, not to the point
17 that you're making about the relationship, my concern is the --
18 it seemed that she's already kind of created a opinion on
19 Officer Mensah, and we know that this case isn't about Officer
10:54 20 Mensah, but I'm -- I think the parties both anticipate and
21 obviously with the question that it's going to be invoked.

22 I'm anticipating the plaintiff, and I was actually
23 surprised how many people hadn't heard of him, but having a
24 juror with -- on top of some of the things that you've noted --
10:54 25 that having a juror who has read about it, seemed to have

10:54 1 formed an opinion, and she said that he was criminally charged
2 or made the comment that he was associated him with a crime,
3 and there's been no adjudication of any crime as relates to
4 Officer Mensah.

10:54 5 THE COURT: Okay. She was not the only one who
6 raised her hand on the Mensah question. I also thought that
7 juror number 11 also raised her hand, that she had -- and I
8 took both of them as having heard stuff on the news.

9 MS. BAYNARD: I think the difference of 11 was she
10:55 10 said I had heard about the name on the news, and juror one
11 indicated that she had read that he was criminally charged
12 or -- again, I don't remember the exact wording of her, but I
13 guess if I'm distinguishing juror one to juror 11, juror 11
14 made it sound like it was more of a heard about Officer Mensah
10:55 15 in the news as opposed to I've read that he was criminally
16 charged for -- kind of any type of event.

17 THE COURT: All right. Anything else, Mr. Schwab, on
18 that?

19 MR. SCHWAB: Sure. I don't know that she said that
10:55 20 she [sic] was criminally charged. I think we should be wary of
21 selecting a jury that doesn't read the news. You know, that's
22 what she indicated, that she read it in the news. And when she
23 was asked if she'd be fair and impartial, she said yes. I
24 don't know -- I don't know how we can, you know, if we're
10:56 25 going to disbelieve her on that, but she only indicated that

10:56 1 she had read it in the news, and I think that that's a normal
2 thing.

3 I agree I'm surprised that only two people, I think we get
4 into our own bubbles here and assume that everyone is familiar
10:56 5 with the things that we're familiar with. Clearly it was not
6 a -- something that raised or crossed the news, but she happens
7 to have read the news that day, I don't think that's a reason
8 to strike her for cause.

9 THE COURT: All right. I don't think I have reason
10:56 10 to strike her for cause on that. As I mentioned, she was not
11 the only person who had raised her hand on that question.
12 Furthermore, the parties are reminded to the extent, you know,
13 Joseph Mensah's name is for a limited purpose, to the extent
14 it's for, on the plaintiffs' side, explaining that plaintiffs
10:57 15 were demonstrating against police misconduct, that's the extent
16 of it. We're not going to have a side trial on Mr. Mensah. On
17 the defense side to the extent that it's to explain why the
18 defendants took particular actions, it's permitted, so we're
19 not going to get in a side trial regarding Mr. Mensah.

10:57 20 MS. BAYNARD: I had one last for cause that I wanted
21 to address with the Court. I believe it's number 16.
22 Initially indicated her boyfriend was a student of Sean Kafer.
23 That wasn't necessarily the part that kind of flagged it for
24 me. She said she could put that aside. It was the actively
10:57 25 participating, and then her boyfriend was, I don't know if she

1 said was a videographer or a photographer for the protest.

2 I guess one of the individuals, or more than one of the
3 individuals who are plaintiffs were also considered
4 videographers or photographers for the protest. I think that I
5 agree that she said that she could be impartial, but I think
6 that actively -- taking actively participating role to the
7 extent where you are not only at the protest but you are
8 filming on their behalf, taking videos is a little bit of a
9 concern for the defendants.

10 THE COURT: Okay. Plaintiffs wish to be heard?

11 MR. SCHWAB: Well, first of all, she wasn't the one
12 doing it. I assume she can set her -- a close personal family
13 relative's opinions aside and be impartial, but she said she
14 could. We also don't know what that role is. They were --
15 Maybe we never inquired into that, we don't know if that person
16 was simply out there in a news role, like a journalist. I
17 don't think we have any information that would support that
18 strike, but again it wasn't that individual. It was her -- a
19 family member. But, you know, I think as we discussed, family
20 members are not those people, and if they said they can set
21 that opinion aside, then we can -- we can -- we can believe 'em
22 on that.

23 THE COURT: All right. Thank you. So I hear your
24 reason for striking for cause, I do think the distinction that
25 she was not the person who was doing the filming, if that is

10:59 1 the concern, makes it a little more attenuated concern, so I
2 don't think that's a basis for cause to strike her.

3 All right. So we don't want to keep the jury waiting
4 further, so, Mr. Miller, is the cleaned up form ready for --
10:59 5 Oh.

6 And then, lastly, Mr. Miller reminded me that I had set
7 juror number 10 aside, and I'm not going to strike him for
8 cause, again, just on the basis of the police officer-son
9 relationship.

11:00 10 Okay. So with that --

11 MR. WIRTH: Judge, just I apologize for interrupting.
12 Can we just -- 14 struck for cause, two struck for cause, six
13 struck for cause, 21 struck for cause, correct? Okay.

14 THE CLERK: That's what I have.

11:00 15 THE COURT: So I -- going through my list, as I say,
16 two, six, 14, 21.

17 MS. KNOWLTON: Yes.

18 MR. WIRTH: Okay.

19 THE COURT: All right. So with having given the jury
11:00 20 a break while we discussed the case, we're going to bring them
21 in for -- while you do your preemptory strikes, and then once
22 we are done with that and we put them under oath, we're going
23 to move straight to our opening statements.

24 MS. BAYNARD: Your Honor, then could the parties take
11:01 25 a quick break then if --

11:01 1 THE COURT: You need a break?

2 MS. BAYNARD: Right. Yeah. I thought they might
3 need one. I'm worried about them, not me.

4 THE COURT: No, no, no. I'm joking, Miss Baynard.
11:01 5 So how much of a break do the parties wish? Real quickly.

6 MS. BAYNARD: There's a lot of people sitting here,
7 so I wanted to make sure everyone gets to like use the
8 bathroom, get water before the opening statements.

9 THE COURT: All right. So I don't want to Ping-Pong
11:01 10 the jury, bring 'em in, bring 'em out, so what I will -- I'll
11 give you a quick five minutes to go to the restroom, then we'll
12 bring them in.

13 MR. SCHWAB: And, Your Honor, just from a
14 housekeeping standpoint, given the time, a few minutes, we'll
11:02 15 bring them back in, we'll do peremptories. Do you think we're
16 going to do openings after lunch?

17 THE COURT: No, we're going to do openings when we
18 bring them back in. We're going to select the jury and proceed
19 to opening statements.

11:02 20 MR. SCHWAB: Okay.

21 MS. MOTLEY: Your Honor, could we address the issue
22 with regards to the target list, the redactions, before we do
23 the openings?

24 THE COURT: Yes. Why don't we -- I'm trying not to
11:02 25 steal from your break time, but we can do that. Go ahead.

11:02 1 Yes.

2 MS. MOTLEY: Okay. Your Honor, for docket number
3 385, plaintiffs filed at the instruction of the Court a new
4 redacted version of the targets list. We'd ask that that be
11:02 5 adopted by the Court. We followed the instructions with
6 regards to what needs to be redacted, and so we'd ask, and we
7 base that off of the Court's order of the specific other items
8 that needed to be redacted from our most recent filing, and we
9 think that that's, you know, sufficient in terms of, you know,
11:03 10 protecting the privacy rights of those that are not plaintiffs
11 in this matter, and we ask the Court to adopt that, and we --
12 that the parties adopt that version of the redacted target
13 list.

14 THE COURT: Give the number again, three --

11:03 15 MS. MOTLEY: I believe it's 380 -- I'm sorry, 385.

16 THE COURT: Okay. I do have that. All right. As to
17 385?

18 MR. WIRTH: Judge, the defendants object to 385
19 because that's the one that got redacted to include redactions
11:03 20 of the plaintiffs' information. So what we did is file Exhibit
21 No. 387, which redacts only information for non-parties.

22 THE COURT: All right. So as I stated this morning,
23 what was authorized was redaction of non-plaintiffs, so redact
24 as to non-plaintiff, as to plaintiffs do not redact.

11:03 25 MS. MOTLEY: Your Honor, that's what we did. We

11:04 1 redact -- We only put in the plaintiffs. The issue is is that
2 with the redactions that the defendants filed on Friday with
3 the Court, there's, first of all, there's certain notations on
4 here, like for instance that Ratkowski wrote, like for instance
11:04 5 referring to Khalil Coleman as a likely Gangster Disciple. You
6 know, we redacted that. Above his name it says the people who
7 the group is renting a loft at Welford Sanders Center. I
8 redacted that because I thought that went to the non-plaintiff
9 above. Because the way that this thing is written, it goes
11:04 10 name, and then there's a dot, so that's why I redacted that.
11 You know, we redacted notations for arrests, you know, the
12 redactions were for prejudicial purposes.

13 THE COURT: But that -- the Court has to decide that,
14 Miss Motley, you can't take it on your own to redact
11:05 15 information.

16 MS. MOTLEY: Your Honor, sorry. And, Your Honor, I
17 understand that, and that's why I thought when I filed the
18 first redaction of the target list and then we received the
19 Court's order, I filed the Court's order and redacted the
11:05 20 additional things. So it wasn't as though with the Court's
21 order I went outside of that, but I -- with the first
22 redaction, these things were also redacted.

23 And so it wasn't that I went beyond what the Court asked
24 for, and, you know, as I understood it, you know, we're not to
11:05 25 bring in things related to criminal, you know, insinuations or

11:05 1 titles or things like that. And this, for instance, this
2 specific note that this person is a likely Gangster Disciple
3 is, and this is just based on defendant Ratkowski's assessment,
4 however he assessed it looking on Google or whatever, but, you
11:05 5 know, I believe that that's extraordinarily prejudicial.

6 And I do want to note that my first filing when I redacted
7 the target list I tried to keep it consistent with the way that
8 defendant Roy redacted the target list when he released it in
9 open records. So that's why I kept -- and actually I redacted
11:06 10 it even more.

11 THE COURT: Let me ask for Ms. -- Miss Motley. For
12 your -- The jury's out, I want to bring them back in. For the
13 opening statements, what do you need from the -- Do you need
14 the entirety of the -- of the list in question?

11:06 15 MS. MOTLEY: No, Your Honor.

16 THE COURT: Okay. So the page, if you're showing a
17 page of it during opening, is it possible to show a
18 non-contested page so that we can take -- address this later
19 and not have the jury waiting?

11:06 20 MS. MOTLEY: Yes, Your Honor.

21 THE COURT: All right. Let's proceed that way, and
22 then we'll return to the details of where it's contested. Take
23 five, and let's bring the jury in.

24 MR. WIRTH: Thank you, Your Honor.

11:16 25 (A recess was taken.)

11:19 1 THE COURT: One second, please.

2 THE BAILIFF: You may be seated.

3 THE COURT: All right. Mr. Miller, we are back on
4 the record with the same attorney appearances as earlier this
11:19 5 morning. Mr. Miller, had the parties received the revised jury
6 lists?

7 THE CLERK: I have to give it to them right now.

8 THE COURT: All right. So let's bring the jury in.

9 (The jury is in the box.)

11:21 10 THE COURT: Members of the panel, thank you for your
11 patience. I am sorry to have to lock you up in a windowless
12 room. I think I don't know if there are windows in there, but
13 I assure you that while you were waiting, we were hard at work.

14 We have reached a part of the trial where the attorneys
11:21 15 will exercise their strikes and then we will select a jury.
16 So, Officer, if you'd please distribute the lists.

17 All right. Members of the panel, while the attorneys are
18 quickly doing their work, some judges usually have jokes to
19 entertain you. I'm afraid to tell you I am not one of those
11:22 20 judges; I don't have any jokes at the ready for you while you
21 are waiting. But I can tell you a little bit about the
22 building while you are waiting.

23 If it is your first time here at the federal courthouse,
24 this is really, I think, one of the most beautiful courthouses
11:22 25 in the country. If memory served me well, the courthouse was

11:22 1 built originally in 1898 and then the 1930's we added a new
2 part of the building.

3 This courtroom that you sit in has been remodeled in this
4 new decade, so it has some bells and whistles, but if you ever
11:22 5 have the opportunity to see the other courtrooms in the
6 building, please do take it.

7 Anyone here have participated or heard of Doors Open? No?
8 Okay. Two people, all the way in the back. Well, Doors Open
9 is a day usually early fall where buildings downtown are open
11:22 10 for touring. So it's a nice opportunity to get to see the rest
11 of the courthouse, if you have not already done so. Bring your
12 families, bring kids, because it's really beautiful. And some
13 other buildings in the downtown area are also open for viewing
14 as well. I'm a courthouse fan, so when I travel, I usually try
11:23 15 to see other federal courthouses because really for the most
16 part really, really beautiful, and ours is one of the -- as I
17 already mentioned, not only one of the most beautiful, but also
18 one -- one of the oldest.

19 I can't remember now as we speak if I was in, I want to
11:23 20 say Denver maybe not 100 percent sure, but I was in another
21 city, and I had asked to see their courthouse. It was a lovely
22 courthouse, lovely enough, and the judge was giving me the tour
23 was bragging about their ceremonial courtroom. Our ceremonial
24 courtroom is on the third floor. It's the first courtroom in
11:24 25 this building, and it's really, really remarkable. This is a

11:24 1 pretty courtroom, but that courtroom is really stunning, and
2 it's the original first courtroom built.

3 And so this other judge was bragging, so, yeah, it's a
4 really old courtroom, it's really beautiful. It was built in
11:24 5 the 1970's. Now, and I'm like, oh, yeah, really old. Mine was
6 built in 1890's. So do -- do take advantage of it.

7 All right. Members of the panel, this is the time where
8 we play a little musical chairs. If you are in the jury box
9 and your number is called, please remain seated in the jury
11:26 10 box. If you are in the jury box and your number is not called,
11 please kindly go sit in the back.

12 If you are sitting in the back and your number is called,
13 please move up to the jury box, and if you're sitting in the
14 back and your number is not called, just remain seated, please.

11:27 15 At this time I will ask the clerk to publish those
16 selected.

17 THE CLERK: The selected jurors are juror number
18 three, juror number four, juror number eight, juror number 11,
19 juror number 12, juror number 13, juror number 15, and juror
11:27 20 number 17.

21 THE COURT: All right. The musical chairs.

22 THE BAILIFF: Come on back, make sure you bring all
23 your personal belongings. Thank you.

24 THE COURT: Just please have a seat, please, if
11:28 25 you're moving to the back.

11:28 1 All right. Mr. Miller, if you'll please call the names of
2 those selected again, and if you're in the box, just to confirm
3 that we have the correct numbers in the box, just raise your
4 hand for me, please, when your number is called.

11:28 5 THE CLERK: Juror number three. Juror number four.
6 Juror number eight. Juror number 11. Juror number 12. Juror
7 number 13. Juror number 15.

8 THE COURT: That's why we do this.

9 THE CLERK: Juror number 17.

11:29 10 THE COURT: All right. Thank you. At this time I
11 would ask that you join me in giving a big round of applause to
12 members of the panel who are not selected. We could not have
13 gotten this far in the process without your participation and
14 contribution to the administration of justice, so thank you so
11:29 15 much and have a wonderful rest of your day.

16 (The additional jurors were excused.)

17 THE COURT: All right. Mr. Miller, if you will
18 please administer the oath to the now selected jury.

19 THE CLERK: All rise, raise your right hand. Do you
11:30 20 each solemnly affirm that you will well and truly try this case
21 between Andrew Aaron, et al., plaintiffs, and Dominick
22 Ratkowski and Joseph Roy, defendants, and give a true verdict
23 according to the evidence? If so, please answer I do.

24 ALL JURORS: I do.

11:30 25 THE COURT: Please be seated, members of the jury.

11:30 1 Members of the jury, now that you have been sworn in,
2 we're going to move into opening statements from the lawyers,
3 but before I invite them to give their opening statements, I do
4 have some preliminary instructions for you, which I believe
11:31 5 will assist you in your participation in the case.

6 To begin, as a reminder, this is a cause of action brought
7 under the DPPA, the Driver's Privacy Protection Act. Under
8 that act, under that law, to establish that the defendants
9 violated the DPPA, plaintiffs must prove three propositions:

11:31 10 One, the plaintiffs must prove that the defendants
11 knowingly obtained, disclosed, or used personal information;
12 two, that this personal information came from motor vehicle
13 records; and, three, it was for a purpose not permitted by the
14 DPPA.

11:31 15 I will have more instructions for you at the end of the
16 trial regarding the DPPA, but I just wanted to get you started
17 to help orient you here. Additionally, I have some other
18 instructions, just again orient you to your participation as we
19 begin.

11:32 20 First, your duty as jurors. It will be your duty to
21 decide from the evidence to be presented what the facts are.
22 You and you alone are the judges of the facts. You are to
23 determine the facts from the testimony you hear and the
24 evidence received during the trial. It is for you to determine
11:32 25 the inferences which you feel may be properly drawn from such

11:32 1 evidence.

2 Nothing I may say or do during the course of the trial is
3 intended to indicate or should be taken by you as indicating
4 what your verdict should be. No statement, ruling, remark, or
11:33 5 comment which I may make during the course of trial is intended
6 to indicate my opinion as to how you should decide the case or
7 to influence you in any way in your determination of the facts.

8 During the course of the trial, I may occasionally ask
9 questions of a witness in order to bring out facts not then
11:33 10 fully covered in the testimony. Please do not assume that I
11 hold any opinion on the matters to which I may ask questions.
12 Remember, again, that you as the jurors are at liberty to
13 disregard all comments of the Court in arriving at your own
14 findings as to the facts.

11:33 15 I may also find it necessary to admonish counsel, and if I
16 do, you should not show any prejudice towards counsel because I
17 have found it necessary to issue such an admonishment.

18 From time to time during the trial it may become necessary
19 for me to discuss matters with the lawyers out of the hearing
11:34 20 of you, the jury, either by having a conference at the bench,
21 when the jury's present in the courtroom, or by calling a
22 recess. Please understand that while you are waiting we are at
23 work. The purpose of this conference is not to keep relevant
24 information from you, but, rather, to decide how certain
11:34 25 evidence is to be treated under the rules of evidence to avoid

11:34 1 confusion and error. We will, of course, do what we can to
2 keep the number and length of these conferences to a minimum.

3 I may not always grant an attorney's request for a
4 conference. Do not consider my granting or denying a request
11:34 5 for conference as any indication of my opinion of the case or
6 what your verdict should be.

7 Evidence. The evidence from which you will find the facts
8 will consist of the testimony of witnesses, documents, and
9 other things received into the record as exhibits and any facts
11:35 10 the lawyers agree to or stipulate to or any fact that I may
11 instruct you to find as a matter of law.

12 Certain things are not evidence and must not be considered
13 by you. Such matters include statements, arguments, and
14 questions by the lawyers are not evidence. Objections to
11:35 15 questions are not evidence. Lawyers have an obligation to
16 their clients to make an objection when they believe evidence
17 being offered is improper under the rules of evidence. You
18 should be -- You should not be influenced by an objection or
19 by my ruling on any objection. If the objection is sustained,
11:36 20 ignore the question. If it is overruled, treat the answer like
21 any other.

22 If you are instructed that some item of evidence is
23 received for a limited purpose only, you must follow that
24 instruction. Testimony that the Court has excluded or told you
11:36 25 to disregard is not evidence and must not be considered by you.

11:36 1 Anything you may have seen or heard outside the courtroom is
2 not evidence and must be disregarded. You are to decide the
3 case solely on the evidence presented here in the courtroom.

4 There are two kinds of evidence, direct and
11:36 5 circumstantial. Direct evidence is direct proof of a fact,
6 such as the testimony of an eyewitness. Circumstantial
7 evidence is proof of facts from which you may infer and
8 conclude that other facts exist. I will give you further
9 instructions on these as well as other matters at the end of
11:37 10 the case.

11 But I want you to have in mind that you may consider both
12 kinds of evidence. It will be up to you to decide which
13 witnesses to believe, which witnesses not to believe, and how
14 much of any witness's testimony to accept or reject.

11:37 15 In considering the weight and value of the testimony of
16 any witness, you may take into consideration the following:
17 The witness's ability to see or hear or know the things about
18 which the witness testifies; the appearance, attitude, and
19 behavior of the witness; the quality of the witness's memory;
11:38 20 whether the witness has an interest in the outcome of the case
21 or any motive, bias, or prejudice; the inclination of the
22 witness to speak truthfully or not along with the probability
23 or improbability of the witness's statements; whether the
24 witness' testimony was contradicted by anything the witness
11:38 25 said previously or by the testimony of other witnesses or

11:38 1 evidence received in this trial. Thus, you may give the
2 testimony of any witness just such weight and value as you
3 believe the testimony is entitled to receive.

4 Burden of proof: Again, as I mentioned this morning, this
11:38 5 is a civil case. The plaintiff, or plaintiffs, are the party
6 making the claim, has the burden of establishing their case by
7 what is called a preponderance of the evidence. To establish
8 by a preponderance of the evidence means to prove that
9 something is more likely so than not so, in other words the
11:39 10 preponderance of the evidence in the case means such evidence
11 as when considered and compared with that opposed to it has
12 more convincing force and produces in your minds belief that
13 what is sought to be proved is more likely true than not true.

14 To put it differently, if you were to put plaintiffs' and
11:39 15 defendants' evidence on opposite sides of the case, plaintiffs
16 would have to make the scales tip somewhat on their side. If
17 the plaintiff fails to meet this burden, your verdict must be
18 for the defendants.

19 Those of you who have sat on a criminal case will have
11:40 20 heard of proof beyond a reasonable doubt. I mentioned that
21 earlier this morning. That requirement does not apply to a
22 civil case, and you should therefore put it out of your mind.

23 Now, I have a few words for you about your conduct as
24 jurors. First, you've heard this already this morning. Do not
11:40 25 talk to one another about this case until the end of the case

11:40 1 when you retire to the jury room to decide your verdict.

2 Second, do not talk to anyone else about this case or
3 about anyone who has anything to do with it until the trial has
4 ended and you have been discharged as jurors. Anyone else
11:40 5 includes members of your family and friends. You may tell them
6 that you are a juror in a civil case, but do not tell them
7 anything else about it until after you are discharged from your
8 duties.

9 Third, do not let anyone else talk to you about the case
11:41 10 or about anyone who has anything to do with the case. If
11 someone should try to talk to you, you must report it to me
12 immediately.

13 Fourth, do not read any news stories or articles or listen
14 to any radio, television, social media, any other kind of media
11:41 15 about the case or about anyone else who has anything to do with
16 the case.

17 Fifth, do not do any research, do not Google, do not make
18 any independent investigation concerning the case.

19 Sixth, do not post on social media about the case, the
11:41 20 parties, the lawyers, especially the judge. Do not post
21 anything on social media about the case.

22 Finally, do not form an opinion until all the evidence is
23 in and the case has been submitted to you. Keep an open mind
24 until you start your deliberations at the end of the case.

11:42 25 After the case is submitted to you, you must discuss it --

11:42 1 you must discuss it only with your fellow jurors in the jury
2 room. It is extremely important that you keep an open mind not
3 to decide any matter raised during the trial until the entire
4 case has been submitted to you pursuant to the instructions
11:42 5 that I will give you at the end of the case.

6 At the end of the trial, you will have to make your
7 decisions based upon what you recall the testimony and evidence
8 to be. You will not have a transcript of the witnesses'
9 testimony with which to consult. Furthermore, it is difficult
11:43 10 and time consuming for the court reporter to read back lengthy
11 testimony. Accordingly, it is of extreme importance that you
12 give this case, including the testimony and evidence received
13 during the trial, your utmost and undivided 100 percent
14 attention.

11:43 15 All right. With that background we are about to begin the
16 trial. Plaintiffs' counsel will be invited to make their
17 opening statement, which is an outline or overview of what
18 plaintiffs expect to prove in their case so that you could have
19 a way, a form of following their case. Next, the defense will
11:43 20 be invited to make an opening statement if they wish to do.
21 Again, opening statements are not evidence, but they are there
22 to give you an outline and a framework.

23 After opening statements, you will hear from the
24 witnesses, and that will be after lunch. We'll take a break
11:44 25 after openings to have lunch and come back and start hearing

11:44 1 from witnesses.

2 So after opening statements this afternoon, you -- the
3 plaintiffs will present their case in chief, and then after the
4 plaintiffs are done with their case in chief, the defendants
11:44 5 have the opportunity to present their case if they so choose,
6 and after hearing from all of the witnesses, I will give you
7 the instructions, that is, the law that is applicable to the
8 case, and then the lawyers will give their closing arguments,
9 and after closing arguments, you'll get some final words from
11:44 10 me, and then we'll turn the baby over to you.

11 Some logistics that may be on your mind. I'll be asking
12 that you report at 8:30 in the morning, and then we'll do a
13 roll call about 8:40, 8:45, make sure everyone's here and
14 settled, and we'll get you in the courtroom by no later than
11:45 15 9:00 a.m. Please be prompt so that we could start and we could
16 end on time.

17 You should expect a morning break halfway through the
18 morning, 15-minute break so you could shake a leg, do some
19 yoga, give the court reporter's fingers a break, and then
11:45 20 one-hour lunch. And then the afternoon, again, 15-minute shake
21 a leg break in the afternoon, and you should plan on ending
22 your day at five o'clock with us. So that's the general
23 schedule that you will -- we will follow in the case.

24 Throughout the trial this week, I'll be checking in with
11:45 25 the lawyers and giving you updates on how we're doing so you

11:45 1 could follow our schedule.

2 So those are the logistics, so with that, I will invite
3 plaintiffs' counsel, Miss Motley, to please -- please make your
4 opening statement.

11:46 5 MS. MOTLEY: Thank you, Your Honor. Getting our tech
6 together. Just one second. Thank you, Your Honor.

7 Good morning, and thank you all for being here today. My
8 name is attorney Kimberley Motley, and along with attorney Milo
9 Schwab and attorney Kathryn Knowlton, we represent the
11:47 10 plaintiffs in this matter.

11 Now, 33 years ago there was a show called Mork & Mindy,
12 that was really popular in the '70's, and it was starring Robin
13 Williams and Mindy, who was the love interest in the show who
14 Mork, who was an alien, had a baby sister in the show. And the
11:47 15 baby sister who played for Mindy, her name was Rebecca
16 Schaeffer.

17 And so Rebecca Schaeffer was a popular actress, and there
18 was a fan that was obsessed with her. And so he started
19 stalking her. And then ultimately he hired a private
11:47 20 investigator for \$250, because he wanted to know where she
21 lived. And so this private investigator went to the Department
22 of Motor Vehicles, and he was able to get her address. And
23 then once this fan got her address, he went to Miss Schaeffer's
24 house and he shot and killed her. She was 21 years old.

11:48 25 It was because of this murder that was -- it became the

11:48 1 catalyst for why we have the Driver's Privacy Protection Act.
2 And so Congress thought that it didn't make sense that a person
3 could go to the DMV to get someone's address or their personal
4 information because we all know that when we get things like
11:48 5 our driver's licenses or our state ID, we have no choice but to
6 give the Government our personal information, such as our
7 address, our date of birth, our height, our weight, those types
8 of things.

9 So what the DPPA says, and we're going to refer to it a
11:48 10 lot as the DPPA, but it's essentially the Driver's Privacy
11 Protection Act, and what it says is that a person who knowingly
12 obtains, uses, or discloses personal information from a motor
13 vehicle record for a purpose not permitted under the DPPA shall
14 be liable to the individual to whom the information pertains.

11:49 15 And this is why you're here today. You're here because
16 the evidence will show that defendant, Dominick Ratkowski,
17 who's sitting in the suit in the corner right there, and
18 defendant Lieutenant Joseph Roy, who's sitting in his uniform,
19 both violated the DPPA against our plaintiffs.

11:49 20 Now, when you think about the DPPA, it's important to know
21 that our privacy is important, our personal information is
22 very, very important. And it belongs to us. And we give it to
23 the Government, they have a duty to protect that information.

24 And so when you talk about what are the actions? So the
11:49 25 way that the law is written there's three actions, okay,

11:49 1 there's obtaining, so it's like a credit card. A person who
2 gets a credit card in the mail, you're obtaining that credit
3 card.

11:50 4 And then if you knowingly use that credit card, you go to
5 the grocery store, you swipe it, that's a use. Or maybe you
6 have a recurring, you know, monthly charge that comes to your
7 credit card. You're not swiping it, but that's still a use
8 because it's hitting your credit card. So if anyone uses that
9 information, that also is a violation of the DPPA.

11:50 10 And then the last point, if a defendant knowingly attains,
11 uses, or discloses that personal information. So if you show
12 your credit card to someone or you make it available to them,
13 or you give it to a person, that's disclosing it to a person.
14 So those are all three violations of the DPPA. And if you do
11:50 15 any one of those three things, obtain, use, or disclose
16 personal information that came from a motor vehicle record for
17 a purpose not permitted, then you're violating the law.

11:51 18 And so when you listen to the evidence, what needs to be
19 shown is that for every time that either defendant obtains,
20 used, or disclosed information from the DMV, they need to show
21 why they did it every time for every single plaintiff
22 specifically.

11:51 23 Now, Dominick Ratkowski and Lieutenant Joseph Roy, they're
24 both employees of the City of Wauwatosa. And you'll hear
25 defendant Ratkowski argue that the reason why he did it is

11:51 1 because it was a legitimate law enforcement purpose. Now,
2 there are exceptions to how you can get this information, use
3 this information from the DMV. But even those legitimate law
4 enforcement purposes have limits. Because the DPPA is meant to
11:51 5 protect all of us, it's meant to protect all of our privacy,
6 all of our data, all of our personal information that we don't
7 have a choice but to give to the DMV if we want a driver's
8 license. And, ladies and gentlemen, it is never, never a
9 legitimate law enforcement purpose to target or to try to
11:52 10 silence people who are engaged in constitutionally protected
11 activity.

12 And you'll hear a little bit about sort of, we know what
13 our rights are, right, we have the First Amendment rights and
14 our First Amendment is something that's -- we all have the
11:52 15 benefit of. And it reads: "That Congress shall make no law
16 respecting an establishment of religion or prohibiting the free
17 exercise thereof or abridging the freedom of speech or of the
18 press or the right of people to peaceably assemble and to
19 petition the Government for a redress of grievances."

11:52 20 This First Amendment is foundational to our country. It's
21 so foundational that our forefathers made it number one. It's
22 number one. It's our first amendment, and the evidence will
23 show that defendant Ratkowski targeted plaintiffs because they
24 are invoking their constitutional right to speech. The
11:53 25 evidence will show that he targeted these plaintiffs because

11:53 1 they are doing things to which our First Amendment allows, such
2 as petitioning government and things like that, and we will
3 talk about that.

4 Now, as the judge said that we have the burden as the
11:53 5 plaintiffs, which means that our burden is a preponderance of
6 the evidence. So if you sort of think about a scale, we have
7 to show by a little over 50 percent that we are proving our
8 case. What the evidence will show is that we're most -- we're
9 more likely than not showing that there were violations of DPPA
11:53 10 by these two defendants, and it's important to note that
11 when -- if Dominick Ratkowski brings up that he did it for a
12 legitimate law enforcement purpose, if he ever obtained, used,
13 or disclosed personal information, it must be used for that
14 purpose.

11:54 15 So defendant Ratkowski can't get on the stand and just
16 say, legitimate law enforcement function, legitimate law
17 enforcement function. He must show you how it was used in that
18 way. And he's the only one that can do that.

19 Now, on June 5th of 2020, which is where a lot of this
11:54 20 case is sort of happening, there was a lot going on in our
21 country. We were in the midst of COVID, if you remember, there
22 was a lot of protests going on. George Floyd had just been
23 killed. There were George Floyd protests happening. There
24 were Blue Lives Matter protests happening, Black Lives Matter
11:54 25 protests happening. It was election year. There was a lot

11:55 1 going on.

2 And while people were taking to the streets, specifically
3 in Wisconsin, there were many communities coming together,
4 like-minded individuals, they were creating Facebooks, they
11:55 5 were marching in the streets, they were doing all these things,
6 and there was a community of people that came together that is
7 essentially referred to as The People's Revolution, or TPR.

8 And if I were to define sort of who they were, because
9 there's no real definition, is they're a Facebook group, and
11:55 10 also they're just a bunch of community members who came
11 together after the killing of George Floyd. And these
12 community members consisted of parents, teachers, pet lovers,
13 all different types of people that came together who were
14 trying to invoke change.

11:55 15 And they tried to invoke change in several ways. They --
16 They marched in the streets, they tried to invoke change by
17 petitioning the Government, they wrote letters to their local
18 leaders, they met with the police, they showed up at meetings,
19 they did things that our First Amendment says that we can do as
11:56 20 citizens. They did those things.

21 And so while many citizens around this country were doing
22 that, Dominick Ratkowski, who was a civilian crime analyst for
23 the City of Wauwatosa, was looking at people online. The
24 evidence will show that Dominick Ratkowski created fake social
11:56 25 media accounts, and he started stalking people on Facebook,

11:56 1 Twitter. He created -- looked at people's dating accounts.

2 Now, defendant Ratkowski, he is not a police officer. He
3 is a civilian crime analyst for the City of Wauwatosa. And on
4 June 5th, 2020, he created a list. And after he was done
11:57 5 looking through social media, he decided to go into people whom
6 he believed were affiliated with TPR into their D.O.T. records,
7 and the evidence will show that it wasn't because they
8 committed a crime or because they were violent, it was because
9 they were protesting. And he did this on June 5th, 2020.

11:57 10 And then after that, he didn't just get any D.O.T.
11 records, he got all 44 plaintiffs' driver's license
12 photographs. He obtained their photograph. He typed his user
13 name, his password to have access to this information. You're
14 going to hear what it takes to access this information. I
11:57 15 don't have access to it. You have to -- The Government has to
16 allow you to have access to it, you have to get -- go through a
17 training, you have to take a test, and you get a user name and
18 password in order to have access to this information.

19 So defendant Ratkowski on his own, on his own went in
11:58 20 there and got peoples' driver's license photographs. And then
21 after he obtained that information, he did that also without
22 their consent. And you'll hear a little bit about there's two
23 different types of information with the DMV, there's personal
24 information and there's highly restricted information. So
11:58 25 personal information is like, you know, your date of birth,

11:58 1 your height, your weight, your eye color. Those are things
2 that you need to give in order to get your driver's license.

3 But highly restricted information are things like your
4 social security number, or your DMV photograph, because when
11:58 5 you go to the DMV, when you -- when they take that picture of
6 you, that photograph doesn't belong to you. It's not like when
7 they give you your driver's license, they give you your
8 driver's license, your head shot. They keep the picture,
9 right? And that picture ends up on your -- on your driver's
11:59 10 license.

11 So he went in there on his own because people were
12 protesting and got their highly restricted information without
13 their consent. And only he can explain why he did that. But
14 the evidence will show that's why he did it. Because TPR, or
11:59 15 people whom he believed were affiliated with TPR, were
16 protesting in the streets.

17 Now, the interesting thing is is that we're going to prove
18 that, number one, defendant Ratkowski did knowingly obtain,
19 disclose, or use personal information. And so when you see
12:00 20 "did", these are agreed upon facts. These are facts that --
21 that they've agreed with and we've agreed.

22 Number one, Dominick Ratkowski, he did go in peoples'
23 D.O.T. records.

24 Number two, Dominick Ratkowski did obtain peoples' -- the
12:00 25 plaintiffs' driver's license photograph.

12:00 1 Number three, Dominick Ratkowski did use those photographs
2 and he put them on a list, a list that he calls and he referred
3 to as a TPR target list. His words. And then after putting
4 them on this list, he then disclosed it to over 100 people,
12:00 5 peoples' private personal information. Now, too, he got it
6 from the DMV.

7 Number three [sic], he's going to argue that he did it for
8 a permissible legitimate law enforcement purpose, and again,
9 and I'm going to repeat this because I think it's really
12:01 10 important. That no law enforcement activity can infringe on
11 the First Amendment rights, ladies and gentlemen. It's never a
12 legitimate law enforcement purpose to target or to try to
13 silence people who are -- who are lawfully engaged in
14 constitutionally protected activity. And that's what he did.
12:01 15 And he did it repeatedly and he did it willfully and
16 recklessly.

17 Now, you're going to see the target list, but this
18 document is so -- there's so much sensitive information that
19 this is what you're going to get. However, for the plaintiffs,
12:02 20 you're going to be able to see what their entry is.

21 Now, on this list that he created, it's a 29-page
22 document, there are over 200 people on this document with
23 information that was obtained from the DMV records.

24 MR. WIRTH: Judge, this is going into the pre-trial
12:02 25 motion.

12:02 1 MS. MOTLEY: Your Honor, these are all stipulations.
2 MR. WIRTH: No, they're not.
3 MS. MOTLEY: Yes, they are.
4 THE COURT: Excuse me. Miss Motley, you may continue
12:02 5 with the opening. Focus on our plaintiffs, please.
6 MS. MOTLEY: Thank you. So for our plaintiffs, there
7 are 44 plaintiffs that he put on this document that are
8 like-minded to the other people on this document. And for our
9 44 plaintiffs, he put their pictures, their addresses, their
12:02 10 dates of birth, he put their vehicle information, and he did
11 this all by watching people -- or people being tagged on social
12 media. The evidence will show that he never went to a protest,
13 the evidence will show that he never verified that any of these
14 people were actually there, and he created this target list.
12:03 15 Now, the second defendant, Lieutenant Joseph Roy, on
16 January 7th of 2021, he released unredacted documents, which
17 contained police reports, citations, et cetera. And those
18 police reports, citations, and documents that he released,
19 which contained over 500 pages of documents, he didn't redact
12:03 20 it. And those documents had plaintiffs' personal information
21 also obtained from the D.O.T.
22 The evidence will show that the information that
23 Lieutenant Roy released contained plaintiffs' addresses,
24 phone -- or, excuse me -- addresses, dates of birth, height,
12:04 25 weight, driver's license numbers, and he released this to 16

12:04 1 people by way of a Dropbox link, and the 16 people he released
2 it to were lawyers, journalists, you know, just regular people
3 in the community who wouldn't have access to this information.
4 And he violated their privacy rights as well.

12:04 5 Now, for Joseph Roy, he's going to allege that when he
6 released this information, he did not know that this
7 information came from the DMV. And the evidence will show that
8 not only did Lieutenant Roy release this information, but that
9 he also released this information knowing that it came from the
12:05 10 Department of Motor Vehicles and that he also, when he
11 disclosed this information to 16 people, also violated the
12 DPPA.

13 Number two, it's indisputable evidence that some of the
14 information that Lieutenant Roy released came from the Motor
12:05 15 Vehicle records.

16 And, three, it's indisputable that he released this
17 information for a purpose not permitted by the DPPA. He's only
18 going to come in and argue that he didn't know that this
19 information came there. And we ask that you listen to the
12:05 20 evidence and come to a conclusion otherwise.

21 Now, this case is not about politics. This is about
22 privacy. It's about our plaintiffs' right to privacy, our
23 plaintiffs' right to have their information protected by the
24 D.O.T. It's their right to go out there and lawfully protest,
12:06 25 and that's what they did.

12:06 1 And they have the right to that privacy, they have a right
2 to not having their information misused in the ways that
3 defendant Ratkowski and defendant Roy misused their
4 information. What happened to the defendants -- or, excuse
12:06 5 me -- the plaintiffs is exactly the type of behavior that the
6 DPPA is meant to protect against.

7 Now, I want to talk to you about my plaintiffs. There's
8 57 plaintiffs on this case. And we've come to an agreement,
9 you're not going to hear from all 57 of them. You're not going
12:06 10 to hear from 57 people that how they feel about this happening
11 to them. But these are real people. These are parents,
12 teachers, our children that were put on this target list;
13 parents, teachers, and children who had their personal
14 information disclosed to over a hundred people simply because
12:07 15 defendant Ratkowski was watching them or seeing them tagged on
16 social media.

17 And I'd like my plaintiffs to please stand. Thank you.
18 You may be seated.

19 And I want you to know that they're going to -- you know,
12:07 20 not all plaintiffs will testify and we're not going to do that
21 to you, but they're real people, they're real people just like
22 everyone else who deserves their privacy to be protected.
23 They're real people like everybody else who also are afforded
24 the right to not have their data and their information being
12:08 25 given out and put on a list, a target list just because.

12:08 1 Now, at the conclusion of this trial, you're going to get
2 the names of the plaintiffs. For defendant Dominick Ratkowski,
3 there are 44 plaintiffs that are on this target list. For
4 defendant Joseph Roy there are 32 plaintiffs who are alleging
12:08 5 that he violated the DPPA with them.

6 And at the conclusion of this case, you're going to get
7 two questions: Number one, you need to decide did the
8 defendants knowingly violate the DPPA when they obtained, used,
9 or disclosed plaintiffs' information from their motor vehicle
12:08 10 records? And so we know, for instance, with Ratkowski, it's
11 just like a credit card, when you get it, just like he got
12 their DMV records, their photographs, that's one. That's an
13 obtainment.

14 When Dominick Ratkowski put that information on the target
12:09 15 list, that's a use. And every time he went to this document,
16 that's a swipe, another swipe on your credit card, that's
17 another use, that's another use, that's another use, and you'll
18 hear how many times he used it. The evidence will show that he
19 used it dozens and dozens of times. And every time he used
12:09 20 this information once he gave it to somebody, made it available
21 to them, every single person that he made it available to, that
22 is a disclosure.

23 And so when you're thinking about this case and the
24 defendant Ratkowski, it's not about a list, it's about every
12:10 25 single person's data. So every time he obtained their

12:10 1 information, he needs to justify why he did it for that
2 specific plaintiff. Every time he went to the list and used
3 it, swiped that credit card and used this list, he needs to
4 justify why he used that specific plaintiff's information, and
12:10 5 for every single person that he disclosed this document to, he
6 needs to justify why he disclosed that specific plaintiff's
7 personal protected driver's information.

8 Now, this is an extremely important case, and we really
9 appreciate you guys being here. We don't just say that. This
12:10 10 is about privacy, and this case is about the misuse of the
11 private information by two persons who worked for the
12 Government. Our privacy is important. Our privacy matters.
13 And this situation is exactly the situation that the DPPA meant
14 to protect us against.

12:11 15 And so at the conclusion of this case we will come to you
16 and we will tell you that our plaintiffs, they deserve privacy
17 just like everybody else. And only you have the power to judge
18 whether or not defendant Ratkowski and defendant Roy violated
19 the DPPA. You have the power to make these two defendants
12:11 20 accountable for what they did against these 57 plaintiffs. It
21 is outrageous what happened.

22 And so at the conclusion of this case, we are going to ask
23 for you to find for the plaintiffs and to find that the
24 defendants obviously violated the DPPA numerous times, and not
12:12 25 only did they violate the DPPA numerous times, but they did so

12:12 1 in a willful and reckless manner. Please hold these two
2 defendants accountable. Thank you.

3 THE COURT: Thank you, Miss Motley. While defense
4 counsel is setting up to approach the bench, please feel free
12:12 5 to stand and stretch yourselves for a hot minute.

6 MR. WIRTH: May it please the Court.

7 THE COURT: Mr. Wirth, you may proceed.

8 MR. WIRTH: Thank you. One of the things you're
9 going to find out in this case is how important it is to listen
12:13 10 to both sides before you start making a decision. Generally
11 speaking, the defense will go second throughout the course of
12 this trial. And as you're about to learn, when you hear the
13 other side of the case, when you hear the explanation, you will
14 realize that it is completely different from what you've just
12:14 15 been told.

16 One of the important things that we do in opening
17 statements is sometimes we have to establish what the evidence
18 will not show, what this case is not about. There is no
19 argument from any plaintiff in this case that in any fashion
12:14 20 were they prevented from protesting or exercising their First
21 Amendment rights. Not one. That is not a question you will be
22 asked in this case.

23 There are no damages in this case. This is a case
24 involving a federal act, a federal code section. No one was
12:14 25 silenced. The concept of the list will be explained to you.

12:15 1 The environment in which this case unfolds is as has been
2 described to you, a very tumultuous time in the city's history.
3 The beginning of 2020, there was a police shooting, and Mayfair
4 Mall became between February --

12:15 5 MS. MOTLEY: Objection, Your Honor. This is
6 something that actually was the subject of our pre-trial
7 motion.

8 MR. WIRTH: Judge, just a little latitude.

9 THE COURT: Miss Motley had described the setting for
12:15 10 this, so with very narrow latitude, without details and
11 focusing on our case, you may set the setting as well.

12 MR. WIRTH: One hundred percent. Thank you, Judge.

13 The Mayfair Mall had become a gathering spot, it had
14 become between the February and May time period a spot where
12:16 15 gatherings, demonstrations, protests had become focused to the
16 point where command level people in the Wauwatosa Police
17 Department, now captain, then lieutenant, Luke Vetter, and now
18 captain, then lieutenant, Shane Wrucke, had decided at the
19 command level, we have to kind of keep an eye on what's going
12:16 20 on.

21 What happened in late May is that the City of Milwaukee
22 contacted Wauwatosa with a list of people it had been involved
23 in the Milwaukee incident four or five --

24 MS. MOTLEY: Objection. He's arguing particulars
12:16 25 that aren't in evidence, Your Honor.

12:16 1 MR. WIRTH: Oh, they are.

2 MS. MOTLEY: We're here for the DPPA.

3 MR. WIRTH: Right.

4 THE COURT: Thank you. We are here for the DPPA,
12:17 5 this is opening statement as I instructed the jury, and will
6 instruct you, the lawyers' opening statements are not evidence.
7 This is what they anticipate the evidence to show.

8 MR. WIRTH: Correct. Thank you, Judge.

9 And that request went to Dominick Ratkowski. So Dominick
12:17 10 Ratkowski began a list to investigate or to find out if he
11 could determine information for the names that had been
12 referred to him. In the course of that investigation, there
13 was a recording that said that mentioned trouble ahead for
14 Mayfair Mall.

12:17 15 At that point Lieutenant Vetter, Lieutenant Wrucke told
16 Dominick Ratkowski, who is a civilian crime analyst employed by
17 the City of Wauwatosa Police Department, do we have
18 anticipatory information, anticipatory identification for what
19 happens if trouble comes to Mayfair? At about that time the
12:18 20 George Floyd shooting occurred, as you've heard, and the level
21 of protests, the frequency of protests and the expansion of the
22 protests occurred.

23 At that point Mr. Ratkowski began to do things like
24 monitor social media to see where these protests were being
12:18 25 announced, where these protests were being gathered, where

12:18 1 these protests were being scheduled, and where they would take
2 place.

3 You'll hear the testimony from Mr. Ratkowski, from
4 officers Vetter and Wrucke, that one of the reasons they did
12:19 5 that is to anticipate, so that they could close down roads, so
6 that they could make sure they have their personnel, and so
7 that they should -- and in some instances to protect the
8 protesters themselves, to facilitate the idea that people are
9 allowed to gather, people are allowed to protest, but they are
12:19 10 not allowed to destroy property, to do those kinds -- to commit
11 acts of destruction.

12 So what the list became is an identification, oftentimes
13 by the protesters themselves by what they would post on their
14 Facebook pages, on their social media, but just as often by
12:19 15 virtue of what friends and colleagues would post and then tag
16 them is people who were frequently involved in the protests so
17 that the police department could anticipate how big a gathering
18 it may be, what the modus operandi may be for the protest
19 itself, to identify people who were leaders. And you'll hear
12:20 20 Lieutenant Vetter tell you that they -- a number of the people
21 on this list were identified because they were leaders.

22 Now, this wasn't a uniform kind of march or uniform
23 demonstration, they professed to want to do 100 in a hundred
24 days. So a lot of times this pod was there, but that pod
12:20 25 wasn't. This gathering had both pods. These had these people.

12:20 1 What they -- the Wauwatosa Police Department wanted to find out
2 is who are the leaders? If this starts to go sideways, who can
3 we contact and say, hey, get your people together, okay. We
4 don't want there to be destruction, injury, those kinds of
12:20 5 things. This is what law enforcement does. It plans to
6 deescalate these kinds of things, it plans to keep them active
7 and -- and going forward, but within the bounds of the law.

8 So what you will find out is that the list itself becomes
9 a series of sometimes Facebook URL's, snapshots from social
12:21 10 media posts, snapshots from, in some fashion, body camera,
11 because the police do then respond to these, but there's no
12 identification.

13 So what Dominick Ratkowski did is he went and once they
14 were tagged, once he figured he had 'em identified, once he
12:21 15 thought he may need that person, he would go to the driver's
16 license and pull up their photo. So the sensitive information
17 that's on the list is their driver's license photos. There are
18 addresses, there are names, but as often as not those came from
19 the -- the names and addresses came from other types of
12:22 20 records.

21 We do not dispute that the pictures that go down the left
22 side of this list are from the Department of Motor Vehicles.
23 Those are the motor vehicle records. The list begins to expand
24 because the protests begin to expand, the demonstrations begin
12:22 25 to expand, so now there are people included on the list that

12:22 1 are videographers, photographers, they're not targets of
2 anything. Target was a word used in an E-mail one time.
3 They're not targets of anything. They're videographers,
4 they're memorialists, they're the ones who are taking the
12:22 5 photographs, taking videography, taking the kinds of recordings
6 that the police, they want to know where they can go if it's
7 time -- if something bad happens and they can go and look and
8 see that person generally records what's going on and we will
9 be able to see and see if anybody's tagged and see who the
12:23 10 people are and see who the recurrent permits are in this thing.

11 So what happens as the time frame is the hundred days, if
12 you will, continues is there is in July, there's an incident at
13 Mayfair Mall. There's a lot of social media and a lot of
14 photographic postings, and I'm not real savvy in social media,
12:23 15 tweets and Twitters and those kinds of things, in which people
16 are identified.

17 So, yes, that data is mined. It's no news to anybody that
18 police departments monitor social media nowadays, and people
19 whose -- who become witnesses, memorialists, those who record
12:23 20 these things may be -- they are -- they include sometimes
21 people who appear to have broken ordinances, so that they can
22 get their citations, what we call tickets, so they can get
23 their citations mailed to them because in that environment you
24 will hear the police officers tell you that in that environment
12:24 25 it isn't always the smartest thing, it isn't always the safest

12:24 1 thing to write citations for property destruction during the

2 demonstration. Rather, go back, take a look at the

3 memorialists, identify who was committing the ordinance

4 violations, and mail them their tickets. That's why their

12:24 5 addresses are on there, that's why their pictures are on there

6 so that they can be identified as witnesses, as memorialists,

7 as possible violators, as leaders, as people who -- who we can

8 rely on to tell us things, okay.

9 The list then expands in August. You've heard reference

12:24 10 to Officer Mensah. There's a demonstration at Officer Mensah's

11 fiancée's house, and there's again, there's some -- there's

12 some trouble. And so, again, they go to the list, they review

13 the social postings, they review the videography, they review

14 the photographs, and they identify people who are going to get

12:25 15 citations or who are witnesses who can help sort out what

16 happened.

17 In August of '14 -- August 14th of 2020, there is a -- a

18 large caravan, vehicles, and in some instances there are

19 individuals who are repeatedly seen at these demonstrations who

12:25 20 are armed. They go on the list.

21 So now the list is witnesses, memorialists, potential

22 violators, potential informants, potential armed people, and

23 what it's doing is it's allowing the police department to try

24 to manage the situation, to anticipate where these are going to

12:26 25 happen, to shut off roads, to tell the people, stop blocking

12:26 1 ambulances, and these kind of things are the purpose, the law
2 enforcement purpose because what you were told is only
3 partially correct.

4 With respect to the DPPA, what it protects is that
12:26 5 officers shall not knowingly disclose personal information from
6 within a motor vehicle record except as provided. What's
7 provided? There's a state statute that says upon the request
8 of any law enforcement agency, it's 66.0313, it's what's known
9 as the mutual assistance, sometimes referred to as the mutual
12:26 10 aid statute, upon the request of any law enforcement agency,
11 the law enforcement personnel of any other law enforcement
12 agency may assist the requesting agency.

13 What's going on now is that this is not confined to
14 Wauwatosa, there are neighboring communities, neighboring
12:27 15 police agencies, neighboring crime analysts who want the
16 information that's in this list. Those are the people with
17 whom we shared the lists. They weren't disclosed to a thousand
18 or a hundred people, whatever it was, just at random. They
19 were disclosed to other law enforcement agencies.

12:27 20 What are the permissible purposes for the list, if you
21 will, for the gathering of the Department of Transportation
22 records that comprise the list? The DPPA permissible purposes
23 are any law enforcement agency in carrying out its functions,
24 any private person, Dominick Ratkowski, acting on behalf of a
12:28 25 local agency in carrying out its functions.

12:28 1 The DPPA actually permits law enforcement to carry out
2 their function, not just to arrest people. They can also be
3 used for any other use specifically authorized under the law of
4 the state for public safety. In other words it is permissible
12:28 5 to exchange this information with other law enforcement
6 agencies. It is permissible to give them a heads-up of what
7 we've gathered when they anticipate there may be trouble in
8 their community.

9 What happens next in September of 2020 is that there's a
12:28 10 disturbance at the mayor's house. Once again, social media
11 pictures, body camera footage, license plates are gathered at
12 the scene to determine who and what happened and where
13 citations might be issued. These are by definition law
14 enforcement, law agency functions. They are permissible.

12:29 15 What -- By the time, and then to kind of end this line of
16 thought, the mayor puts in a curfew in October. It kind of
17 coincides with when the hundred days are winding down, so there
18 aren't a lot of additional citations issued after that, but
19 when they are, they're issued for curfew violations and once
12:29 20 again they're identified using usually body camera or dash
21 camera for people who are out after curfew, the curfew ends,
22 the hundred days ends, and the list ends. The list was done by
23 November of 2020.

24 So throughout its five-month existence, the list was used
12:30 25 by a law enforcement agency to identify witnesses, potential

12:30 1 leaders, to obtain cooperation, to ensure safety. It
2 identified those who frequently appeared because there was an
3 indication that if this group shows up, it's going to be
4 bigger, it's going to be more expansive, it may even be more
12:30 5 dangerous.

6 It's going to frequently post on social media, and that we
7 need to know so that we can go look and see who we have to
8 identify. It is not being shared with the world. It's being
9 shared with other law enforcement agencies who are experiencing
12:30 10 the same kind of social unrest.

11 Folks, we are not here, this trial is not about whether or
12 not the protests, the First Amendment rights of protesters was
13 an adequate vehicle for social justice versus the other side of
14 the argument, oh, they're just opportunists. That's not what
12:31 15 this is about. What you are here in trial to be a jury for is
16 the DPPA. Was the information from the Department of Motor
17 Vehicles, keep in mind it's only the information limited to the
18 Department of Motor Vehicles, with respect to the list by and
19 large that's the photographs, were those photographs that
12:31 20 helped the police identify who they had discerned being present
21 at these things by social media, body cam, tags and videos,
22 YouTube, some people live-streamed it while they were there,
23 and they were able to identify people, was that a law
24 enforcement function? There's no catch. Of course it was.

12:31 25 In addition, there were memorialists, you will hear that

12:31 1 there were photographers and videographers on the list because
2 we needed to know whose website we could go to and see the
3 videos, or whose social media we could go to and see the
4 videos. There were ordinance violators. Quite often it was
12:32 5 bad karma to try to issue tickets during the protests, during
6 the demonstration. Those were issued afterwards, and we had to
7 know where to send 'em.

8 And, finally, the idea that the photographs were what I
9 would call primary source material, but in some fashion there
12:32 10 was a protester hit list, so we went through and like pulled up
11 a bunch of random driver's license photographs because that's
12 who we were looking for, it's the complete opposite. What
13 happened is the protests happened, the demonstrations happened.
14 Whatever the outcome was happened. And then we looked at what
12:32 15 we call public source materials to identify who we needed to
16 start categorizing as the leader. We can go to that person and
17 say, hey, guys, this is getting out of hand. Can you control
18 your people? We can go to that person and say, hey, can we see
19 your video? Or go to their publicly posted site and see their
12:33 20 video.

21 So these are the kinds of law enforcement, law agency
22 functions that that list served. You're probably sitting there
23 thinking, well, yeah, of course that's what law agency does.
24 Of course they want to anticipate this. Of course they want to
12:33 25 identify what it will take to keep things safe, what it will

12:33 1 take to keep things as organized as it could be. What's the
2 catch? There is no catch. That's it. That's what the list is
3 for.

4 There's a quirk, and the quirk is the special verdict
12:33 5 form. You will be asked in the special verdict form to answer
6 a question based upon what's -- you've heard called the burden
7 of proof. Generally speaking, that burden of proof rests with
8 the plaintiffs. So the idea is that the question has to be
9 worded so that the burden of proof is in the question. They
12:34 10 weren't finalized yet, but you're going to be asked a question
11 something like this: With respect to Dominick Ratkowski, did
12 he knowingly obtain, use, or disclose such plaintiffs' personal
13 information from a motor vehicle record for a purpose not
14 permitted by the DPPA? So the question is did he, basically,
12:34 15 violate the DPPA?

16 So when it comes to question number one, you will actually
17 answer that question no, because the evidence is going to show
18 you, was there a law enforcement function for the list and the
19 names on the list? Of course there was. But the answer isn't
12:34 20 yes when it comes time to answer the question, the answer is no
21 because the question asks you was there no law enforcement, no
22 law agency reason for that list?

23 So when the time comes for you to answer the special
24 verdict, we will ask that you answer for each plaintiff no,
12:35 25 this list was not a violation of the DPPA.

12:35 1 As you've heard, there are two questions that you will be
2 asked to answer in this question. The second question involves
3 Lieutenant Joseph Roy. Lieutenant Roy works in the -- in a
4 division of the Wauwatosa Police Department that responds to
12:35 5 open records requests. You will hear that Wisconsin is what's
6 called a sunshine state, we are very pro open records. So when
7 the request comes in, the exception is to redact anything
8 that's being asked for. The rule is to produce it.

9 The open records requests that came in following the
12:35 10 conclusion of the fall and the beginning of January was
11 responded to on January 7th, 2021. What Joseph Roy did is he
12 sent an E-mail to, I think there were 16 addressees, 14 of --
13 some of whom were attorneys for the plaintiffs that asked for
14 everything they got, some of whom were the plaintiffs -- they
12:36 15 got more than they asked for -- but plaintiffs themselves were
16 asking, attorneys for the plaintiffs were asking, and news
17 agencies were asking.

18 And what Joseph Roy did is he gathered the information,
19 the information that was released by a Dropbox link was
12:36 20 citations that you and I call tickets, incident reports, which
21 are the reports of why -- why and to whom the tickets will be
22 issued, body camera video, dash camera video, other kinds of
23 memorializations.

24 So really the only area where motor vehicle records could
12:37 25 have been released in that is when the concept of what's in the

12:37 1 release came from the motor vehicle record. It's not just that
2 Joseph Roy is going to tell you, no, I didn't know, what he's
3 actually going to tell you is you can't know. He couldn't
4 know.

12:37 5 What happened is while it's true that the citations that
6 were in that open records disclosure, Joseph Roy is just the --
7 essentially the custodian of the record, the guy who produces
8 it. He didn't write the citations. He didn't write the
9 incident reports. He didn't put the data in those.

12:37 10 So you start from the premise that Joseph Roy doesn't know
11 where the data is in the citations and the incident reports
12 came from, he didn't author them. They were certainly created,
13 they were certainly distributed, but the DPPA requires that he
14 know he's districting motor vehicle records.

12:38 15 What you are going to learn is that with respect to the
16 citation, and by and large what's in a ticket is your name and
17 your address, your date of birth, sometimes your driver's
18 license number, but by and large it's -- there's no pictures,
19 we're no longer talking about pictures. It's name, address,
12:38 20 date of birth.

21 With respect to the citations, the information that's in
22 the citation, and Mr. -- Lieutenant Roy will tell you the
23 information that's in the citation can come from
24 self-reporting. You ask someone what their name and address
12:38 25 is, they give it to you. That's not a motor vehicle record,

12:38 1 although the name and address will be in the citation.

2 It can also come, certainly can come from the Department
3 of Transportation, it could be that it came from a motor
4 vehicle record. That is one of the choices. It also could
12:39 5 come from the NCIC, the National Crime Information Center, for
6 any plaintiffs who had prior contact with law enforcement.

7 That information, name, address, date of birth can also
8 come from the Crime Information Bureau, the CIB, which is the
9 state version of a database for people who've had contact with
12:39 10 law enforcement. And it could be contact that was three months
11 earlier and now it resulted in a -- another contact that
12 produced this citation. Self-reporting could very well be.
13 Could it be a D.O.T. record? Could it be a motor vehicle
14 record? Certainly could be. Could it be a record from the
12:39 15 NCIC? Absolutely could be. Could that information have come
16 from the CIB, the Crime Information Bureau? Absolutely it
17 could.

18 And there's a huge database called TLO that was adopted by
19 private citizens, and it is a massive database in our country,
12:40 20 and the owners and operators of that database offer it free to
21 law enforcement.

22 So if you're -- if you're following along here, the
23 information that's in the citation could've come from the
24 person themselves, the Department of Transportation, the NCIC,
12:40 25 the CIB, or the TLO. Five different ways that that name,

1 address, date of birth, even the driver's license number could
2 be in that citation.

3 There is no way for Joe Roy, who did not author that
4 citation, to know how that information got in there, to know
5 that he is disclosing motor vehicle records.

6 With respect to the incident reports, it's even harder,
7 it's even more difficult because the incident reports are
8 specifically, those are typed up by the reporting of the
9 responding officer. Those are created back at the station, so
10 to speak, and they're created in the police department's record
11 system called Phoenix.

12 And the reports are generated in a sub program called
13 NAMES, it's an acronym for something, but it's NAMES. And
14 NAMES has its own database. So the information that goes into
15 the incident reports now could've come from the NAMES database,
16 could've come from the people who received the citation, could
17 certainly have come from the Department of Transportation,
18 CIB --

19 MR. SCHWAB: Your Honor, there's a lot of evidence
20 that's being introduced here. I don't know if this is argument
21 as opposed to evidence you're seeking to be introduced.

22 THE COURT: Thank you for the objection. Mr. Wirth,
23 you may continue with the at line of what you anticipate the
24 evidence to show.

25 MR. WIRTH: Thank you. And Lieutenant Roy will tell

12:42 1 you names, database, self-reporting, D.O.T., NCIC, CIB, TLO.
2 He will also tell you that nothing in the report tells him
3 where that information came from or where it was entered or who
4 entered it. He isn't the author of either the citation or the
12:42 5 report. So when Joseph Roy tells you that he doesn't -- he
6 didn't knowingly disclose motor vehicle information, that's
7 why. He can't know. It's not -- It doesn't -- It's not
8 self-evident.

9 So the last question you'll be asked in this case is,
12:42 10 again, that kind of flip question where you're not being asked
11 the affirmative, did Joseph Roy not know. You're being asked,
12 did Joseph Roy knowingly disclose motor vehicle information in
13 the E-mail of January 7th, 2021? Once again, we will ask that
14 for each of the 32 plaintiffs who are plaintiffs for the Roy
12:43 15 disclosure, you answer all of those questions no.

16 The idea, hopefully, that we go second has now been
17 impressed upon you for why it's important to hear all of the
18 information. We intend to call or question, if he's called by
19 others, Luke Vetter, we intend to call Shane Wrucke, we intend
12:43 20 to call Dominick Ratkowski, and we intend to call Joseph Roy.

21 What I just told you to expect from their testimony, you
22 will hear from them as they sit as witnesses. When the
23 evidence is in, you're going to be asked two questions: Did
24 Dominick Ratkowski create and distribute the list for no law
12:44 25 enforcement purpose? The answer is going to be no.

12:44 1 You're going to be asked, did Joseph Roy in his open
2 records -- in his position as the open records distributor
3 knowingly distribute motor vehicle records? Again, we're going
4 to ask you to answer those questions no.

12:44 5 That is -- That concludes my presentation, but the
6 emotion that attends that time period in the city's history
7 shouldn't distract you from the questions you'll be asked to
8 answer. We trust that you will answer them truthfully, and we
9 ask that your verdict speak that truth, whatever the truth may
12:44 10 be. Thank you.

11 THE COURT: Thank you, Mr. Wirth. Members of the
12 panel, you have now heard the parties' opening statements.
13 You've all earned A. plus today, I know you started your day
14 early to join us early, and you've been paying attention, and
12:45 15 you have more than deserved an hour lunch. It is now 12:45.
16 You are on your own for lunch. Please report back at 1:45.
17 The CSO will show you how to get back in the jury room. Thank
18 you. Have a good lunch.

19 Again, please do not talk about the case and do not
12:45 20 research the case, and keep an open mind. You have not heard
21 any -- You have not heard evidence yet. Thank you.

22 THE BAILIFF: All rise for the jury.

23 (The jury was excused.)

24 THE COURT: Please be seated, everyone. All right.
12:46 25 I want to make sure that you get a lunch, because you too have

12:46 1 put in hard work today already. A couple of things. First, I
2 did note some reaction from the room as -- as opening
3 statements were being made. I remind everyone, it's, of
4 course, very human to react to things that you hear that you
12:46 5 agree or disagree with, but it's really very important that we
6 do not do anything during the trial to distract the jury from
7 the important work that they have to do. So please contain our
8 reactions throughout the trial.

9 Secondly, Mr. Schwab, this morning you raised the issue
12:47 10 with Mr. Weber, and I contacted Mr. Knight and he's been
11 waiting since noon to talk to me on the record regarding what
12 he knows so that he can make a record. So Mr., I don't know if
13 it's Mr. Miller or who's going to get Mr. Knight on the phone?

14 THE CLERK: I'm going to try through here.

12:47 15 THE COURT: Yes, thank you.

16 THE CLERK: To do a two-way. Can we just go back and
17 I'll call him on there to make sure he's ready, I think I can
18 call him on there. One second, please. All right. Give this
19 a try.

12:49 20 MR. PATRICK KNIGHT: Hello, it's Pat Knight.

21 THE COURT: Good afternoon, Mr. Knight. This is
22 Judge Joseph.

23 MR. PATRICK KNIGHT: Good afternoon, Judge.

24 THE COURT: Thank you for making time. I apologize,
12:49 25 we ran a little bit over what we anticipated, but I'm sure you

12:49 1 understand.

2 MR. PATRICK KNIGHT: Not a problem, Judge.

3 THE COURT: We are on the record in jury trial for
4 case 20-CV-1660, Andrew Aaron, et al. versus Ratkowski and Roy,
12:49 5 and the reason I'm calling you is regarding witness Weber, the
6 former chief of police who was subpoenaed for the trial that
7 was scheduled to begin this morning at 8:30. Mr. Knight, do
8 you currently represent Mr. Weber?

9 MR. PATRICK KNIGHT: No, I do not, Your Honor.

12:50 10 THE COURT: Did you previously represent Mr. Weber?

11 MR. PATRICK KNIGHT: Yes. If you'd like, I can
12 recite on that. In July of 2020 I was engaged to represent
13 Mr. Weber, and at that time it was an internal investigation
14 being conducted by the Wauwatosa Fire and Police Commission.
12:50 15 That -- And I completed that, then I was engaged by the City
16 of Wauwatosa to represent Chief Weber in February, I believe,
17 of '21, and that was with regard to the John Doe proceedings
18 that were being conducted in Milwaukee County Circuit Court.
19 And I did represent him throughout there, and those matters
12:51 20 concluded in the course of that.

21 So I have not represented former Chief Weber in any other
22 matters. I've been engaged in both those instances by the City
23 of Wauwatosa to represent the chief and in any subsequent
24 matters not.

12:51 25 With regard to this matter, Judge, I was contacted, oh, I

12:51 1 think within the last couple weeks by Tom Fisher, who I know
2 who's an investigator, and I believe he was working for
3 Miss Motley, and he asked me about Chief Weber and mentioned
4 that there was some difficulty with service, and I said, I'll
12:51 5 look into it.

6 I was unaware of this case, so I did check this case and
7 saw that he was a party to it and saw that he had been
8 dismissed out of it, and also saw that while it was pending,
9 who his attorneys were.

12:52 10 So I -- I concluded a long time ago at the end of the John
11 Doe, so I had not had any contact with Mr. Weber since his
12 retirement, and I -- I passed along the note to -- or sent an
13 E-mail off to Miss Baynard just to let her know that Mr. Fisher
14 had reached out to me.

12:52 15 But I obviously, I don't have any authority to accept the
16 subpoena or to represent him in the matter in which presumably
17 he had counsel during the time it was pending. So that's why I
18 did not reach out to the chief, and I haven't received anything
19 in writing from any of the parties, but that's the extent of my
12:53 20 contact so far.

21 THE COURT: Thank you, Mr. Knight. If you could
22 stand by for a second, please.

23 MR. PATRICK KNIGHT: Sure.

24 THE COURT: Miss Motley, any further questions for me
12:53 25 or Mr. Schwab from attorney Knight?

12:53 1 MR. SCHWAB: So my understanding is that he, in fact,
2 that this individual, this attorney was not contacted by
3 Mr. Weber but was, in fact, contacted by Mr. Fisher who was
4 contacted by Mr. Weber?

12:53 5 MR. PATRICK KNIGHT: I was contacted by Mr. Fisher.
6 I'm unaware of any communications or contact with Mr. Weber
7 other than Mr. Fisher advising me that they had encountered
8 some difficulty in service, and I don't know about that, and
9 that's -- that's simply information that I received in a phone
12:53 10 call from Mr. Fisher.

11 MR. SCHWAB: You know, Your Honor, my understanding
12 was that this individual was the one that passed on that
13 Mr. Weber was in Israel. Maybe I misunderstood that. I'm not
14 sure where this information that he's out of the country came
12:54 15 from, if it was directly to defense counsel or -- but it
16 doesn't sound like it was to this attorney.

17 MR. PATRICK KNIGHT: No. I'm unaware of his
18 location, if he's in country or out of country right now.

19 THE COURT: Thank you. Mr. Wirth, Miss Baynard, any
12:54 20 question for Mr. Knight?

21 MR. WIRTH: No, Judge.

22 MS. BAYNARD: No.

23 THE COURT: All right. Mr. -- Anything further,
24 Mr. Schwab?

12:54 25 MR. SCHWAB: No, Your Honor.

12:54 1 THE COURT: All right. Mr. Knight, thank you so much
2 for making time for us. Please enjoy the rest of your day.
3 MR. PATRICK KNIGHT: Okay. Not a problem, Judge.
4 Thank you.

12:54 5 THE COURT: Thank you.
6 MR. PATRICK KNIGHT: Bye now.
7 MR. SCHWAB: Still confused where the providence of
8 Mr. Weber being out of country comes from. My understanding
9 from this morning is that it was from this guy.

12:54 10 THE COURT: That's why I called Mr. Knight, and you
11 heard -- I did not speak to --
12 MR. SCHWAB: I --
13 THE COURT: Excuse me. I did not speak to him prior
14 to coming on the record, so you're hearing what I'm hearing at
12:55 15 the same time as well.
16 MR. SCHWAB: Thank you.
17 THE COURT: All right. You also have deserved a
18 lunch, so if you could take an hour for lunch as well, and very
19 quickly when we come back for lunch, before the first witness,
12:55 20 witness Wigley take the stand, we can take up the exhibit list
21 issues that we started this morning.
22 MS. MOTLEY: Thank you, Your Honor.
23 MR. SCHWAB: Your Honor, if I may just make one
24 request that you send the marshals over to Mr. Weber's house to
12:55 25 see if he's home?

12:55 1 THE COURT: Okay.

2 MR. SCHWAB: We were told by defense counsel that
3 this attorney had reached out to them. That apparently is not
4 the case. I don't know if he actually is in Israel. We, like
12:55 5 I said, we had weeks of efforts to -- we spent significant sums
6 to try to serve him, he appears to be dodging service at times.
7 We don't know if he truly is in Israel or in the Middle East or
8 just sitting in his living room determined not to come here.

9 THE COURT: Do you know at this time whether
12:56 10 Mr. Weber's currently represented by other counsel? Mr. Knight
11 said he did not -- he doesn't no longer represent him.

12 MR. SCHWAB: I do not know. All I can say is that we
13 served him, we made efforts, and this was telegraphed for weeks
14 and weeks. We discussed with opposing counsel about this.
12:56 15 This was not a secret that we were attempting to serve him. We
16 did affect service upon him, he didn't show, he never filed
17 anything, he never apparently retained an attorney to file
18 anything. He should be held in contempt of court right now,
19 and we should send a marshal out to go get him.

12:56 20 THE COURT: And, Mr. Wirth or Miss Baynard, do you
21 know if someone other than Mr. Knight is representing
22 Mr. Weber?

23 MS. BAYNARD: No, Your Honor. And I would say that
24 for the purpose of this case, when we became aware, so this
12:56 25 E-mail that I'm looking at from Pat Knight when we became aware

12:56 1 of it on Sunday we addressed it at the pre-trial conference on
2 Monday, we didn't get a heads-up that he was being served, so
3 we couldn't coordinate it. So it wasn't like, hey, we're
4 trying to serve Barry. All right. Let me E-mail him and say,
12:57 5 hey, you're going to be out of town? Are you back on Thursday?
6 Are you back -- excuse me -- back on Friday?

7 So, I mean, for the purpose of he is going to be a witness
8 in this case, I don't think he would have personal service,
9 I'm -- I don't think he would have personal representation.
12:57 10 I'm not aware of any attorney that represents him, but Pat
11 Knight just represented him, I think that's why Tom Fisher
12 reached out.

13 So we will make efforts to -- We can try to contact him,
14 but I don't want to be kind of like held up or, you know, if we
12:57 15 can't get him today or tomorrow, or I guess whenever.

16 THE COURT: All right. If defense counsel can reach
17 out to see what's the latest information regarding Mr. Weber's
18 location, and we'll take it from there.

19 MR. WIRTH: Very good.

12:58 20 THE COURT: Okay. Thank you.

21 THE BAILIFF: All rise.

22 (A lunch recess was taken.)

23 THE CLERK: Judge Joseph is on the bench. Calling
24 case 20-CV-1660, Andrew Aaron, et al., versus Dominick
13:59 25 Ratkowski and Joseph Roy, continuation of the jury trial.

13:59 1 Appearances, please, beginning --

2 THE COURT: Good afternoon. Given that we have the
3 same appearances as this morning, I'll just enter in the record
4 that we have the same appearances.

14:00 5 Ms. Motley, regarding the exhibit list, do the contested
6 areas concern any of the witnesses that we will hear from this
7 afternoon?

8 MS. MOTLEY: Your Honor, I do -- would like to
9 address the redacted target list that we all know what we can
14:00 10 and cannot use.

11 THE COURT: Okay. Yes, but does it concern any of
12 the witnesses we're going to see right away?

13 MS. MOTLEY: It may.

14 THE COURT: It may. Okay. All right.

14:00 15 MS. MOTLEY: And it may with one witness. It may.
16 Sorry.

17 THE COURT: So I have 385 in front of me, and I also
18 have 387. So I believe 385 came from the plaintiff and 387
19 came from the defense. So on the first page, the difference I
14:00 20 see between these two is that on the defense, there is the
21 line, The People's Movement group note, and I read that similar
22 to the plaintiff, that line refers to the person above? It --

23 Mr. Wirth, you -- because the way it's written it's a
24 person's name and then notation. So you're shaking your head
14:01 25 no, so go ahead, please be heard.

14:01 1 MR. WIRTH: Judge, the testimony will be that Khalil
2 Coleman was one of the leaders of The People's Movement group,
3 and so that notation actually goes down with him. He's on the
4 list as one of the leaders.

14:01 5 THE COURT: I understand that, so am I reading the
6 chart incorrectly, that name and notes in reference to this --
7 to the individuals?

8 MR. WIRTH: It's that -- It's not uniform, you are
9 correctly reading it for most of the entries, but it -- because
14:01 10 it was added to and from, it got disjointed in places.

11 THE COURT: All right. Ms. Motley?

12 MS. MOTLEY: Your Honor, you know, it just -- I mean,
13 I'll take attorney Wirth's word for it, it's just that we -- we
14 did talk on Friday, he did tell me that on Friday, that was the
14:02 15 first time, you know, I'd heard of that, but it just didn't
16 make sense with the way that it is in the -- in the target
17 list, so --

18 THE COURT: Okay. Well, I was reading it the same
19 way as the plaintiffs' counsel was reading it, but if

14:02 20 Mr. Wirth's presentation to the Court is that Mr. Ratkowski
21 will testify that this relates to the person immediately below,
22 then it will not be redacted.

23 The next difference I see is with plaintiff redacted G.D.
24 and the defense did not. Mr. Wirth?

14:02 25 MR. WIRTH: Right, it just says G.D. I know that

1 attorney Motley suggested that that's an abbreviation for
2 Gangster Disciples, and it very well may be, but that's not
3 what it says.

4 THE COURT: Okay.

5 MR. WIRTH: We don't intend to suggest that
6 Mr. Coleman is on this list because he's a Gangster Disciple.

7 THE COURT: All right. Well, if we're not going to
8 get into that just at a matter of prudence, let's redact that
9 G.D.

10 And then the next -- unless I'm missing it, but the next
11 page I see differences are -- is on page 29.

12 MR. WIRTH: There's a couple other ones before that.

13 THE COURT: There's a couple other ones before that.
14 All right. Take me to the next page of differences.

15 MR. WIRTH: I'll have to call up the ones that have
16 the red stripes on 'em.

17 THE COURT: And while Mr. Wirth is calling that up,
18 Miss Motley, part of the reason I wanted to take this up later
19 and we are not rushing is because we do have the jury waiting,
20 so if it really does not concern the witnesses that we are
21 expecting, because it does require us going entry by entry, but
22 if it does not, I'd like to save them for later when we're not
23 rushing through them.

24 MS. MOTLEY: Your Honor, I can understand that, and
25 that's fine. I would like -- I would like for us -- The

14:04 1 issue is is that now Captain Vetter's going to testify, and so
2 this list may come in, and frankly our perspective is I'm not
3 trying to be disrespectful to the Court, but their whole
4 defense is permissible purpose, permissible purpose, so why is
14:04 5 anything being redacted? If this whole document is a law
6 enforcement permissible purpose that is not a violation of
7 DPPA, then I don't -- the redactions -- this is the problem,
8 Your Honor, from a practical standpoint.

9 We have this list redacted. Then we have Joseph Roy, he
14:04 10 redacted the list also. And on that redaction of the list, the
11 names of non-parties are not redacted. So are we going to
12 redact that? And then there's different versions of this list.
13 There's like 25 versions of this list.

14 So it's, you know, it's a bigger sort of issue, I think,
14:05 15 and I just wanted to put that on the record at least so that
16 the Court is aware. I'll definitely, you know, with -- with
17 Vetter I'm happy to -- I don't want to waste the Court's time.
18 I agree with --

19 THE COURT: Well, it's not my time, but we do have
14:05 20 the jury waiting, and if it's something that I would need to go
21 entry by entry into, it's going to take longer.

22 MS. MOTLEY: I just ask the Court to allow me to use
23 docket 285 today. That's the path of least resistance. I'm
24 not going to ask Vetter like, okay, let's look at page 25, you
14:05 25 know, what does this entry say? But I may use it.

14:05 1 THE COURT: You may use the exhibit, but not portions
2 that are contested that I have not ruled on.

3 MS. MOTLEY: Thank you, Your Honor.

4 THE COURT: Okay. And in regards to the continuing
14:05 5 objection about the list being redacted, again, it is redacted,
6 the global redaction is for non-plaintiffs, and the reason for
7 that as I explained previously I think is supported by the four
8 corners of the statute, that is that DPPA is an individual
9 rights kind of statute, so the individuals have to assert their
14:06 10 violation of the DPPA.

11 To allow plaintiff -- names who are not plaintiffs to be
12 submitted to the jury, or to be questioned to then the defense
13 would have the right to explain why those others are on the
14 list and they're not parties to the case. So that is the
14:06 15 reason. We'll focus on the plaintiffs, that's what you have
16 the burden of showing, and that's what they have the
17 opportunity to respond to. Let's bring our jury out.

18 (The jury is in the box.)

19 THE COURT: You may be seated. Good afternoon,
14:09 20 members of the jury. We are continuing as to where we left off
21 this morning. Prior to lunch you had the opportunity to hear
22 the parties' opening statements, and now we begin the evidence
23 part of the case with the plaintiffs presenting their case.
24 Miss Motley?

14:09 25 MR. SCHWAB: Your Honor, plaintiffs call for their

14:09 1 first witness Madeleine Schweitzer. And, Your Honor, may I
2 work from the lecturn?

3 THE COURT: Yes, you may. Just be careful not to
4 block the jury.

14:09 5 MR. SCHWAB: Sure thing.

6 THE CLERK: Raise your right hand.

7 MADELEINE SCHWEITZER, called as a witness herein,
8 after having been first duly sworn, was examined and testified
9 as follows:

14:10 10 THE WITNESS: I do.

11 THE CLERK: You can have a seat, please. State and
12 spell your first and last names.

13 THE WITNESS: Madeleine, M-A-D-E-L-E-I-N-E,
14 Schweitzer, S-C-H-W-E-I-T-Z-E-R.

14:10 15 DIRECT EXAMINATION

16 BY MR. SCHWAB:

17 Q. Good afternoon, Miss Schweitzer.

18 A. Hi.

19 Q. Miss Schweitzer, where do you currently live?

14:10 20 A. I live in Milwaukee, Wisconsin.

21 Q. Okay. And where did you grow up?

22 A. I grew up in Whitefish Bay, Wisconsin.

23 Q. Okay. Tell me a little bit about your background.

24 A. I, like I said, grew up in Whitefish Bay, went to college

14:10 25 at MIAD at the Milwaukee Institute of Art & Design, worked as a

14:11 1 gathering manager at an art gallery in town for 10 years, and
2 now I am the general manager of a restaurant.

3 Q. Okay. And during the period in question, the summer of
4 2020, what was your profession?

14:11 5 A. I was a gallery manager and I was doing a little part-time
6 managing work at a restaurant.

7 Q. Okay. And did you have any -- any hobbies you were
8 engaged in at that time as well, anything that was important in
9 your life?

14:11 10 A. Yeah, I'm a painter, so painting, photography, artwork,
11 all -- all that stuff.

12 Q. Okay. Now, at some point you became involved in a set of
13 marches; is that correct?

14 A. Yes.

14:12 15 Q. When about did you become engaged?

16 A. I became engaged, I think it was very late May, 2020, and
17 a large protest was going by my house, and I felt moved and I
18 joined in. My family, a source of pride in my family is the
19 fact that my grandparents marched with Father James Groppi, who
14:12 20 is a influential civil rights leader in town, and when I saw
21 all the different communities coming together, I joined in.

22 Q. Okay. And at some point the movement or -- or these
23 marches formed, I guess, into a kind of a loose coalition that
24 we've heard described as TPR. Are you familiar with that?

14:13 25 A. Yes.

14:13 1 Q. Where -- Were you part of those marches?

2 A. I was. Yes. My husband and I, who is a -- the director
3 of the documentary department at UWM, we decided we were going
4 to film every march of TPR as they tried to reach 100 marches
14:13 5 and even beyond those 100 marches, so, yeah, it was still --
6 still working on the documentary.

7 Q. You said a hundred marches. Was this a hundred marches
8 scattered across any amount of time?

9 A. Consecutively, so 100 -- 100 days of consecutive marching.

14:13 10 Q. Okay. So a hundred days. How many of those days did
11 you -- did you show up?

12 A. I think I only missed a couple of days, so -- but like I
13 said, the marches went beyond 100 days. I was there for
14 probably 80 percent, 85 percent of the different marches.

14:14 15 Q. And what would 85 percent of the total marches look like
16 in a numerical sense?

17 A. Ooh, I went to art school. So I think there was a whole
18 year of action, so 375, 325, something similar -- A lot of
19 days.

14:14 20 Q. Maybe over 300?

21 A. Yes.

22 Q. Okay. And how big were these marches, you know, what was
23 the size range?

24 A. In the very beginning they were very large, and there were
14:15 25 multiple different groups, not just TPR, ooh, thousands of

14:15 1 people in the very early days, but the numbers dwindled as time
2 went on, and I'd say a good day I'd have 40 people.

3 Q. Okay. So you talked about these hundred days. Moving
4 past the first couple weeks with a lot of energy, 40 average
14:15 5 people per day?

6 A. It really depended on the day.

7 Q. Sure.

8 A. Sometimes less.

9 Q. And what was -- what was the -- how long were these
14:15 10 marches? How long would they go for?

11 A. Hours.

12 Q. Hours?

13 A. It really depended on the day, of course, but there were
14 nights where we wouldn't get home until like pretty late,
14:16 15 11:00 p.m., so, ooh, we would march five to six hours some
16 days, again, depended on the day. Some days were shorter, some
17 days were longer. But, yeah, there's a lot of -- lot of miles
18 put on.

19 Q. And you were filming most of this, right?

14:16 20 A. Yes.

21 Q. Okay. What -- Can you describe for me what these marches
22 on a day-to-day basis looked like?

23 A. Yeah. So we would all gather in one place, we would find
24 out the location from a Facebook page and meet up, have a
14:17 25 little pre-march circle. They were always quite joyous. We

14:17 1 were -- There's a song that was sung stating what -- what the
2 day was, what number we'd reached, and then there would be a
3 impactful speech about why the group is there and what -- what
4 goals they had.

14:17 5 Q. Okay. Now, we heard in the opening statement how the
6 police needed this list because everyone was blocking
7 ambulances, and I can't even -- I apologize, I didn't catch the
8 parade of horrors that were listed, but did you ever see
9 anyone blocking ambulances while you were out there in these
14:18 10 day after day after day, 300 days?

11 A. I never saw that, no. It was -- The group I saw was full
12 of teachers and sometimes children and parents, and that was
13 never anything that occurred that I saw.

14 Q. Were people chanting?

14:18 15 A. Yes.

16 Q. People holding signs?

17 A. Yes.

18 Q. And at times marching in the street?

19 A. Correct. Yeah.

14:18 20 Q. Okay. Now, you found yourself on this target list; isn't
21 that correct?

22 A. Yes.

23 Q. Okay. Did you ever commit a crime?

24 A. No.

14:18 25 Q. Any police ever reach out to you to investigate you for a

14:18 1 crime?

2 A. No.

3 Q. Are you aware of any conduct you engaged in that could

4 constitute a crime?

14:18 5 A. No.

6 Q. Okay. Any police ever reach out to you to ask you

7 questions about possible other investigations of crimes?

8 A. No.

9 Q. Blocking of ambulances?

14:19 10 A. No.

11 Q. Nobody ever knocked on your door?

12 A. No.

13 Q. Okay. And, in fact, you said you filmed day after day

14 after day, right?

14:19 15 A. Yes.

16 Q. So you had hundreds of hours of film?

17 A. Yes.

18 Q. Any police ever reach out to you to ask if they could

19 review your film?

14:19 20 A. No.

21 Q. So how did it feel when you learned that you had been

22 placed onto this list?

23 A. Really violating. Yeah, felt like my personal privacy was

24 put out there to people that I didn't know, and I have had

14:20 25 experiences with a stalking situation in the past, and so that

14:20 1 was concerning to me as a -- as a young woman.

2 Q. And, again, you've reviewed that target list, right?

3 A. Yes.

4 Q. And you saw your picture on there?

14:20 5 A. Yes.

6 Q. And you recognize where your picture came from?

7 A. Yes.

8 Q. Where was that?

9 A. My driver's license.

14:20 10 Q. Okay. You ever consent to the use or disclosure of your
11 driver's license picture?

12 A. No.

13 Q. Your birthday?

14 A. No.

14:20 15 Q. Your -- The address that was on file with the Department
16 of Transportation?

17 A. No.

18 MR. SCHWAB: No further questions.

19 THE COURT: Thank you, Mr. Schwab. Mr. Wirth?

14:20 20 MR. WIRTH: Very briefly.

21 CROSS-EXAMINATION

22 BY MR. WIRTH:

23 Q. Miss Schweitzer, when did you learn about the list?

24 A. Well --

14:21 25 Q. Well into the lawsuit, right?

14:21 1 A. January, 20 -- What year?

2 Q. Okay. And I don't -- I wasn't trying to trick you at
3 all. It was well after the protests were over?

4 A. Well, this -- that's hard because I've heard accounts of
14:21 5 other people who would --

6 THE COURT: Okay.

7 BY MR. WIRTH:

8 Q. I'm asking you. You were unaware of this list until well
9 after the protests were over, correct?

14:21 10 A. No.

11 Q. What's incorrect about that?

12 A. I knew there was a list, either in police vehicles or at
13 the station. I'd heard accounts of people seeing their photos.

14 Q. Where would you post the film that you would take during
14:22 15 these 300 marches?

16 A. On social media and --

17 Q. I don't know what social media is. What medium?

18 A. Facebook and Instagram, and I believe we have some on our
19 website.

14:22 20 Q. You also have a website with the films?

21 A. Yes. Yes.

22 Q. Within those 300 marches that you filmed, what would be
23 the subject of your filming? What were you there to film?

24 A. The people that made up The People's Revolution, the
14:22 25 different relationships.

14:23 1 Q. The singing and the chanting and the sign holding, that
2 kind of thing?

3 A. Yes.

4 Q. Did you go to all of the protests, the marches, I think
14:23 5 we're calling them, that your schedule permitted?

6 A. Yes.

7 Q. You were never prohibited by the police from attending a
8 march, correct?

9 A. Correct.

14:23 10 Q. And you were there for 80 to 85 percent of them?

11 A. Yes.

12 Q. And you were permitted to film those 80 to 85 percent you
13 attended?

14 A. Yes.

14:23 15 Q. Is it your testimony that during your attendance you never
16 saw property destruction?

17 A. I -- No.

18 Q. You never filmed property destruction?

19 A. No. Oh, yes. No. No.

14:24 20 Q. What -- What hung you up there?

21 A. I just forgot how you phrased that.

22 Q. Okay.

23 A. My fault.

24 Q. And I -- if I do that, it's a bad question, just tell me
14:24 25 to ask it a different way, okay?

14:24 1 A. Okay. Sorry.

2 Q. Were you there in your 80 to 85 percent in the presence of

3 any confrontations between protesters and police?

4 A. Can you ask that again?

14:24 5 Q. Sure. Any shouting matches, any nose to nose, any

6 physical confrontations, anything like that?

7 A. Yes.

8 Q. Did you film those?

9 A. Yes.

14:24 10 Q. Were those also then posted on Facebook, Instagram, and

11 your website?

12 A. Yes.

13 Q. Those would be filmed witness of confrontation between

14 protesters and police, correct?

14:25 15 A. Yes.

16 Q. The groups that you traveled with you said were kind of

17 friends and neighbors, teachers, those kinds of things?

18 A. Yes.

19 Q. But the protests themselves, especially on the days when

14:25 20 there were a thousand people, were made up of multiple

21 different groups, correct?

22 A. Yes.

23 Q. So your perspective and your filmography in that

24 perspective was kind of in and amongst your group and your

14:25 25 orbit, if you will?

14:25 1 A. Yes.

2 Q. Okay. But you would agree with me that in those protests

3 there were different groups and different orbits that you may

4 be completely unaware of?

14:25 5 A. Yes.

6 Q. Why Wauwatosa? Why were you there?

7 A. We had learned of a police officer who had killed three

8 young men of color in a five-year span who was at that time

9 still on the force.

14:26 10 Q. Were you also in other municipalities?

11 A. Yes.

12 Q. What other municipalities were you in?

13 A. Whitefish Bay, Milwaukee, West Allis, Shorewood.

14 Q. Multiple north shore neighborhoods?

14:26 15 A. Yeah. Yes.

16 Q. And in those multiple north shore neighborhoods did you

17 also film the marches?

18 A. Yes.

19 Q. In those multiple other north shore neighborhoods did you

14:26 20 ever film property destruction?

21 A. No. I don't believe I did.

22 Q. So your experience -- And was that also dozens, hundreds

23 of marches in the other north shore suburbs?

24 A. Dozens.

14:27 25 Q. So maybe 400 marches total?

14:27 1 A. Yeah.

2 Q. And in 400 marches, you never saw property destruction?

3 A. Not in these suburbs.

4 Q. All you were -- All you recall filming in terms of other

14:27 5 than the singing and chanting and sign holding would be

6 confrontations between marchers and police?

7 A. Amongst.

8 MR. WIRTH: Then I guess that's all I have. Thank

9 you.

14:27 10 THE WITNESS: Okay.

11 THE COURT: Anything further, Mr. Schwab?

12 REDIRECT EXAMINATION

13 BY MR. SCHWAB:

14 Q. These confrontations with police officers, were they

14:27 15 physical?

16 A. Sometimes.

17 Q. Protesters would throw punches at police officers?

18 A. No.

19 Q. Okay. The protester conduct, was it verbal or physical?

14:28 20 A. The protesters were often hurt by police officers.

21 Q. Okay. And we talked about the -- those marches with

22 thousands?

23 A. Yes.

24 Q. Were those the marches through Wauwatosa throughout the

14:28 25 summer?

14:28 1 A. No.

2 Q. Okay. And, you know, you heard that the police didn't
3 make an effort, you know, that -- Or you were asked if the
4 police tried to stop you from filming, correct?

14:28 5 A. Correct.

6 Q. How does knowing that you're on this list impact your
7 likelihood to film future protests?

8 A. It gives me pause. I feel worried, and knowing my
9 information is out there, I don't feel as comfortable as I once
14:29 10 did.

11 MR. SCHWAB: Thank you. No further questions.

12 THE COURT: Thank you, Mr. Schwab. Thank you. You
13 may step down.

14 THE WITNESS: Thank you.

14:29 15 THE COURT: Your next witness, Mr. Schwab?

16 MR. SCHWAB: Yes, Your Honor. I'm going to call --
17 Plaintiffs call Tiffany Stark.

18 THE BAILIFF: Watch your step.

19 TIFFANY STARK, called as a witness herein, after
14:29 20 having been first duly sworn, was examined and testified as
21 follows:

22 THE WITNESS: I do.

23 THE CLERK: Okay. You can have a seat, and then
24 please state and spell your first and last name.

14:29 25 THE WITNESS: My name is Tiffany Stark. Tiffany,

14:29 1 T-I-F-F-A-N-Y, Stark, S-T-A-R-K.

2 DIRECT EXAMINATION

3 BY MR. SCHWAB:

4 Q. Good afternoon, Miss Stark.

14:30 5 A. Good afternoon.

6 Q. Can you tell me where you currently live?

7 A. I live in West Allis, Wisconsin.

8 Q. Okay. And where did you grow up?

9 A. In West Allis, Wisconsin.

14:30 10 Q. Okay. Born and raised?

11 A. Yes.

12 Q. Can you tell me a little bit about your background, your
13 experiences?

14 A. I have a bachelor's degree from Mount Mary College in
14:30 15 social work and then I have a graduate master's degree from
16 UW-Milwaukee. I graduated in 2009. I'm a mental health social
17 worker; I work with addictions and mental health.

18 Q. And where do you -- where do you provide those services?

19 A. I work at the VA Medical Center on the inpatient psych
14:30 20 unit.

21 Q. Okay. How did you come to be involved with -- with the
22 marches in the summer of 2020?

23 A. I saw a post from an MPS teacher that was organizing a
24 protest or a community event with family and kids just to get
14:31 25 some information and get to know other people that were

14:31 1 concerned with the things that were happening in our country
2 and our -- in our own city.

3 Q. Okay. And do you remember when that was, approximately?

4 A. It was in June of 2020.

14:31 5 Q. Okay. And at some point you became -- you at least were,
6 is it fair to say that you were involved with multiple marches
7 in Wauwatosa as well?

8 A. I would say yes and no. It's hard to tell. I mean, I
9 would say I wasn't out there a lot. I would probably say I did
14:31 10 'em maybe altogether maybe like 30 protests.

11 Q. Sounds like a lot to me.

12 A. Not like everybody -- You know, there was a lot more
13 people out there, but with my time constrictions, that's what,
14 you know, I would try to come when I could, but depending on my
14:32 15 schedule.

16 Q. Okay.

17 A. And they were in different places, so Tosa was some of
18 them, but not all of them.

19 Q. Okay. And what was your experience at these -- these 30
14:32 20 or so marches?

21 A. It was a great energy, it was a lot of different people
22 from different backgrounds. There was people that were older,
23 younger, in the middle, people that were -- that were part of
24 groups in Tosa, like Tosa moms or, you know, there's just a lot
14:32 25 of different organizations. And it was exciting to see people

14:32 1 come together and, you know, try to, you know, encourage each
2 other and trying to figure out what we can do to make our
3 community and country better.

4 Q. Okay. And did you see kids out there?

14:32 5 A. Yes.

6 Q. Did you see people holding signs?

7 A. Yes.

8 Q. Did you ever see anyone blocking an ambulance?

9 A. No.

14:33 10 Q. Did you ever see anyone committing property destruction?

11 A. No.

12 Q. Breaking windows?

13 A. No.

14 Q. Graffitiing anything?

14:33 15 A. No.

16 Q. Violence? Did you ever see a protester engaged in
17 violence?

18 A. No.

19 Q. Okay. And you hesitated. You know, and so at some point
14:33 20 you -- it turns out you were placed onto this target list;
21 isn't that your understanding?

22 A. Yes.

23 Q. And you've seen the -- your entry for the target list?

24 A. Yes.

14:33 25 Q. Okay. Do you recognize the photo?

14:33 1 A. Yes.

2 Q. And where is that from?

3 A. That's from the protests I mentioned that the MPS teacher

4 had organized.

14:33 5 Q. Okay.

6 A. Which was family friendly children.

7 Q. Did you ever commit any crimes while you were out there?

8 A. No.

9 Q. And did the police ever reach out to you?

14:33 10 A. No.

11 Q. Ever stop by your door?

12 A. Nope. No, sorry. No.

13 Q. Nobody ever reached out to you to investigate any crimes?

14 A. No.

14:34 15 Q. Okay. Well, then tell me what -- how did it feel when you

16 did see that you were -- your name and your address and your

17 other personal information had been placed onto this target

18 list.

19 A. I was in shock. Because I was never pulled over, never

14:34 20 ticketed, never arrested. I just couldn't believe that I was

21 on the list. Like I said, I maybe went to 30 marches, and

22 there's other people that have been out there more frequently,

23 and I just was -- other people were shocked. I was shocked.

24 Q. Okay. And you said you work in healthcare?

14:34 25 A. Yes.

14:34 1 Q. Are you in your own professional capacity subject to any
2 privacy laws?

3 A. Yes.

4 Q. Tell me about those.

14:34 5 A. There's a law called HIPA, which means you cannot release
6 anybody's medical personal information without a release of
7 information or you would be fired.

8 Q. And in your job you take that seriously?

9 A. Yes.

14:35 10 Q. Lastly, did anyone ever reach out to you to ask if they
11 could put your name on this list?

12 A. No.

13 Q. Anyone ever reach out to you to see if they could access
14 your D.O.T. records?

14:35 15 A. No.

16 Q. And anyone ever reach out to you to see if they could
17 share your personal contact information around?

18 A. No.

19 Q. Okay.

14:35 20 MR. SCHWAB: No further questions.

21 THE COURT: Thank you, Mr. Schwab. Mr. Wirth?

22 CROSS-EXAMINATION

23 BY MR. WIRTH:

24 Q. Miss Stark, very briefly. You indicated that you attended
14:35 25 about 30 of the protest marches; is that correct?

14:35 1 A. Yes.

2 Q. How many of those took place in Wauwatosa?

3 A. Maybe five or six.

4 Q. How many times were you part of the protests that were at

14:35 5 the mayor's house?

6 A. Zero.

7 Q. How many times were you in the protests that took place on

8 or near Mayfair Mall?

9 A. Maybe two.

14:36 10 Q. With respect to your inclusion on the list, were you ever

11 stopped by Wauwatosa from participating in any of the marches

12 that your schedule permitted you to attend?

13 A. No.

14 Q. With respect to your presence on the list, were you ever

14:36 15 contacted by any other police department to stop you from

16 attending a protest that your schedule permitted?

17 A. No.

18 Q. You don't specifically know where the list -- You don't

19 personally know where the list of the contents of the list may

14:36 20 have been distributed, correct? Other than what you may have

21 heard today in court.

22 A. I only know when I learned about it, but I don't know

23 where exactly it was distributed, but I did hear that it was

24 given to other municipalities and other police entities and all

14:37 25 of that.

14:37 1 Q. But none of those police entities stopped you from
2 protesting or marching or attending either, did they?

3 A. No.

4 Q. Which of the protests in Wauwatosa do you remember?

14:37 5 A. I remember some of the protests with the family of Jay
6 Anderson, I remember the October march after the -- the
7 Coles -- after D.A. Chisholm decided not to charge Joseph
8 Mensah in the murder -- well, the murder of Alvin Cole.

9 Q. And that's -- that's kind of how you feel, correct?

14:37 10 A. Yes.

11 Q. And that October one was one of the big ones, correct?

12 A. Yes.

13 Q. Hundreds of people, correct?

14 A. Yes.

14:38 15 Q. And did you circulate among those hundreds of people, or
16 did you stay kind of in your group?

17 A. I stayed in my group.

18 Q. And who was your group?

19 A. Some of my friends.

14:38 20 Q. So with respect to the hundreds of marchers, you don't
21 know what others may have been doing?

22 A. Correct.

23 MR. WIRTH: That's all I have, Judge.

24 THE COURT: Thank you. Anything further, Mr. Schwab?

14:38 25 MR. SCHWAB: Yes, Your Honor.

14:38 1 THE COURT: Anything further?

2 MR. SCHWAB: Yes, Your Honor.

3 THE COURT: Oh.

4 REDIRECT EXAMINATION

14:38 5 BY MR. SCHWAB:

6 Q. Knowing that your personal information has been disclosed
7 like this, does that impact your feelings about protesting in
8 the future?

9 A. I don't know, I have to be careful because I work for the
14:38 10 federal government, I have security clearance, and I have to
11 get a PIV card renewed, and that doesn't -- hasn't been renewed
12 since all of this has happened, and it's not going to be
13 renewed --

14 MR. WIRTH: I don't mean to interrupt the witness,
14:39 15 but we're going into material that was prohibited by motions in
16 limine.

17 THE COURT: If we could tie into that by --

18 MR. SCHWAB: I'm only asking the question in response
19 to his question about whether it stopped her from protesting.

14:39 20 THE COURT: Okay. If you could just answer the
21 question directly, please.

22 THE WITNESS: Yes.

23 MR. SCHWAB: No further questions.

24 THE COURT: All right. Thank you so much.

14:39 25 Mr. Schwab, your next witness?

14:39 1 MR. SCHWAB: Ms. Motley is going to -- is --
2 Plaintiffs will call Lauryn Cross to the stand. Miss Motley
3 will conduct direct.

4 THE COURT: Thank you.

14:39 5 LAURYN CROSS, called as a witness herein, after
6 having been first duly sworn, was examined and testified as
7 follows:

8 THE WITNESS: I do.

9 THE CLERK: Thank you. You can have a seat, and
14:40 10 please state and spell your first and last name.

11 THE WITNESS: Lauryn, L-A-U-R-Y-N, Cross, C-R-O-S-S.

12 DIRECT EXAMINATION

13 BY MS. MOTLEY:

14 Q. Good afternoon, Miss Cross.

14:40 15 A. Hello.

16 Q. Please note with questions, answers to questions, you have
17 to use words so the court reporter can take everything down.
18 So yes, you have to say the words.

19 A. Yes.

14:40 20 Q. Thank you. So, Miss Cross, June 5th of 2020, what were
21 you doing that day?

22 A. I know that I was at a protest, it was a couple days
23 before my birthday. I had been on about 90 percent of the
24 protests that summer.

14:40 25 Q. Okay. And while you were at the protests, did you -- have

14:40 1 you ever been charged with a crime for being at a protest on
2 June 5th of 2020?

3 A. No.

4 Q. Have you been charged with a crime for being at a protest
14:41 5 in 2020 at all?

6 A. No.

7 Q. Okay. Have you ever been ticketed by any Wauwatosa
8 officers for being at a protest?

9 A. No.

14:41 10 Q. You see where defense counsel table is, correct?

11 A. Yes.

12 Q. Okay. So the man behind him with the tie is Dominick
13 Ratkowski. Have you ever met Dominick Ratkowski before?

14 A. No.

14:41 15 Q. Okay. And the man sitting next to him is defendant
16 Lieutenant Roy. Have you ever met him before?

17 A. No.

18 Q. Okay. Have you ever been contacted by anyone from the
19 City of Wauwatosa on June 5th of 2020 or at any time in 2020?

14:41 20 A. No.

21 Q. And when you were at a protest, did you ever block any
22 ambulances?

23 A. No.

24 Q. When you were at a protest, did you ever, you know, tell
14:42 25 officers what your date of birth is?

14:42 1 A. No.

2 Q. When you were at a protest did you ever tell officers what
3 your address is?

4 A. No.

14:42 5 Q. Okay. And you're aware that you're on the target list,
6 correct?

7 A. Yes.

8 Q. Okay. And how does it make you feel to be on the target
9 list?

14:42 10 A. I think it's kind of intimidating to continue doing
11 protests. Yeah, I see it as like something that kind of like
12 criminalizes me for taking part in something like that.

13 Q. Okay. And when did you first learn that you were on this
14 target list?

14:42 15 A. I think during the open records request for the target
16 list through --

17 Q. And just to refresh your memory, would that have been
18 around January -- or, sorry -- around July of 2021?

19 A. Yes.

14:43 20 Q. Okay. So you heard that -- June 5th of 2020 you said you
21 were protesting, right?

22 A. Yes.

23 Q. You've heard that on June 5th of 2020 it was agreed that
24 defendant Ratkowski created a list, correct?

14:43 25 A. Yes.

14:43 1 Q. Okay. So from June 5th of 2020 until July of 2021 you
2 didn't know you were on this list?

3 A. Yes.

4 Q. Okay. And based off of that, has it affected you from
14:43 5 going out and engaging? Protesting?

6 A. I think it makes me feel like I have to be a little bit
7 more careful. I think I, like, resonate well with, like, the
8 stalking portion of it. That's what I feel like when I'm --
9 when I'm protesting is like I'm being stalked.

14:43 10 Q. I'm sorry. I didn't mean to upset you.

11 A. That's okay.

12 Q. Did you engage in any other sort of activity, like did you
13 ever write any letters to the Government?

14 A. Yes, I did petitions with community members, you know,
14:44 15 like police crime issues, I -- Was that the question? Yeah,
16 I'll answer it.

17 Q. Did you ever attend any meetings?

18 A. With police?

19 Q. With -- With anyone in the Government.

14:44 20 A. Yes.

21 Q. Okay.

22 MS. MOTLEY: I have nothing further. Thank you.

23 THE COURT: Thank you, Miss Motley. Miss Baynard, am
24 I calling on you?

14:44 25 MS. BAYNARD: Yes, briefly.

CROSS-EXAMINATION

BY MS. BAYNARD:

Q. Miss Cross, do you live in Wauwatosa?

A. No.

Q. Okay. Did you ever attend protests in Wauwatosa?

A. Yes.

Q. Okay. Did you attend a protest in Wauwatosa on July 7th of 2020?

A. I probably did.

Q. Okay. Did any -- Did you ever attend a protest at the Mayfair Mall?

A. Yes.

Q. How many do you think? In the summer of, let's use summer of 2020, so we'll go from May to October.

A. At least four.

Q. Okay. Did you ever attend a protest that -- in Wauwatosa at The Cheesecake Factory?

A. Yes.

Q. Okay. Were you ever a part of a group that shut down The Cheesecake Factory during a protest?

A. Yes.

Q. Okay. And what was -- I guess do you recall what date that occurred on?

A. No.

Q. Okay. So if -- Can you give me a time frame of when you

14:45 1 were protesting? We'll go to Mayfair Mall first.

2 A. A time frame? Anywhere from like the beginning of July
3 till like mid July, I think. I'm not sure.

4 Q. Okay. But you said -- I believe you said you were
14:45 5 involved in a protest that shut down The Cheesecake Factory,
6 correct?

7 A. Yes.

8 Q. And you're not sure when that would've occurred?

9 A. Yes.

14:45 10 Q. And what was -- I guess what was your participation in
11 the protests that shut down The Cheesecake Factory?

12 A. I was an emcee, so I introduced like speakers for the
13 event. I was with the Cole family at the time who was speaking
14 at The Cheesecake Factory, and that's it.

14:46 15 Q. Okay. Are you aware that The Cheesecake Factory is
16 private property?

17 A. Yes.

18 Q. Okay. And are you aware that Mayfair Mall is private
19 property?

14:46 20 A. Yes.

21 Q. Okay. And when you were involved in the protests that
22 shut down The Cheesecake Factory, you said your role was to be
23 an emcee. I guess can you just explain kind of what your --
24 explain what the emcee role would have -- what it would have
14:46 25 entailed?

14:46 1 A. Yeah. So like at an event, it would be to introduce the
2 speakers, the program for the event, why people are there. If
3 any -- If there needed to be like a relationship between, you
4 know, like people that had the venue for that event, so I did
14:46 5 talk to like the gentleman -- the manager of Cheesecake Factory
6 before we went into The Cheesecake Factory to have the event.
7 I talked to participating organizations in the event, and then
8 I also was with one of the families that had spoken at the
9 event, so just keeping in communication with people who were
14:47 10 speaking or people that were there.

11 Q. Okay. Were you ever a part of the group that attempted to
12 extort The Cheesecake Factory for a mural of Alvin Cole?

13 A. Extort The Cheesecake Factory? What do you mean by that?

14 Q. Were you ever part --

14:47 15 MS. MOTLEY: Your Honor, completely improper
16 questioning. She's trying to throw in insinuation. The
17 question doesn't even make sense, unintelligible.

18 THE COURT: All right. Miss Baynard, the witness did
19 not answer the question. You may rephrase it, please.

14:47 20 MS. BAYNARD: Do you want me to ask the question?

21 THE COURT: You may rephrase it.

22 BY MS. BAYNARD:

23 Q. Okay. At your -- At the event where you assisted -- the
24 protest where you were at that shut down The Cheesecake
14:48 25 Factory, were you there reading off demands to -- over a

14:48 1 microphone?

2 A. Yes.

3 Q. Okay. And was one of those demands that if The Cheesecake
4 Factory did not create a mural that you would -- the protesters
14:48 5 would continue to shut The Cheesecake Factory down until they
6 did so?

7 A. No, that was not the demand.

8 Q. Okay. Were one of the -- I guess is one of the
9 statements that you made there, do you recall making a
14:48 10 statement that to the effect of you knew The Cheesecake Factory
11 made \$20,000 a day or some amount of money a day and that you
12 were -- you and the group were going to continue to show up
13 until they met your demands?

14 A. I did not make that statement.

14:48 15 Q. Okay. And beyond the 7/7 Cheesecake Factory protest, you
16 said you were at some -- at the Mayfair Mall. Where else did
17 you participate in protests at?

18 A. Where else did I participate in protests, like in 2020?

19 Q. Well, let's do the -- we'll do the summer of 2020.

14:49 20 A. I participated in protests on the east side of Milwaukee,
21 there's like a chalk and walk thing for the school board. I
22 participated in protests at I think it was Wauwatosa Police
23 Department. I'm not sure which, like the streets or which --
24 yeah.

14:49 25 Q. At the Wauwatosa Police Department?

14:49 1 A. Um-hum.

2 Q. Okay.

3 A. I participated in protests at like most parts of Wauwatosa
4 or like most parts of the City of Milwaukee.

14:49 5 Q. Okay. Why was -- I guess what was the purpose of
6 shutting down The Cheesecake Factory on 7/7 then?

7 A. That was the place where Alvin Cole was killed, which this
8 is also in relation to the ongoing campaign against Joseph
9 Mensah, who took part or was accused in taking part of the
14:50 10 murder of Alvin Cole.

11 Q. What would shutting The Cheesecake Factory down, I guess,
12 have to do with protesting for that -- for the cause that you
13 said you were protesting?

14 A. I think the movement at that time was -- or and the
14:50 15 release of footage, and it was belief that The Cheesecake
16 Factory had access to CCTV footage during the time of Alvin
17 Cole's murder.

18 Q. Okay. And what was the purpose of I guess you said you
19 protested at Mayfair Mall. How many times -- I'm sorry if I
14:50 20 asked this question -- how many times do you think you
21 protested at Mayfair Mall?

22 A. Not that many. I think like under four definitely at
23 Mayfair Mall.

24 Q. Yeah.

14:50 25 A. Yeah.

14:50 1 Q. You said under four?

2 A. For me personally, yes.

3 Q. And are you aware that Mayfair Mall was a, for lack of a
4 better word, a consistent spot for these protests to occur?

14:51 5 MR. SCHWAB: Objection, Your Honor. Foundation.

6 THE COURT: Overruled. She may answer if she knows.
7 The witness may answer if she agrees.

8 THE WITNESS: I'm sorry? What was the question
9 again?

14:51 10 BY MS. BAYNARD:

11 Q. I said -- I believe my question was whether you were
12 ever -- oh, were you aware that Mayfair Mall was a spot of --
13 where consistent protesting was occurring?

14 A. I'm aware that some protests occurred there.

14:51 15 Q. Okay. Are you aware if Mayfair Mall was ever shut down
16 because of the protesting?

17 A. I'm aware.

18 Q. You're aware that it was?

19 A. Um-hum.

14:51 20 Q. Okay. And I believe you said that you -- you continued to
21 protest?

22 A. Yes.

23 Q. Do you still continue to protest?

24 A. Yes.

14:51 25 Q. Okay. And that's not withstanding your knowledge of this

14:51 1 list?

2 A. Can you rephrase the question? I'm sorry.

3 Q. You continued to protest --

4 A. Yes.

14:52 5 Q. -- even though you have knowledge of a list that exists?

6 A. Yes.

7 Q. Okay.

8 A. Differently, but yes.

9 Q. Okay. Have you seen -- Have you seen the list?

14:52 10 A. Yes.

11 Q. Okay. Where did you see it?

12 A. There was an article put out by the Wisconsin Examiner

13 detailing the list. I found out through like the official list

14 and whether or not I was on it through the press.

14:52 15 Q. Okay. So the Wisconsin Examiner posted the list, that's

16 how you found out about it?

17 A. No. I -- I knew about the list's existence through the

18 open records request, but like details as to what was on the

19 list I learned through the press.

14:52 20 Q. Okay. So have you seen -- I'm trying to -- I'm sorry if

21 my questions aren't good. You've seen it -- You've seen a

22 copy of the list, and I believe on your direct you said you

23 recognize your driver's license photo? Did you -- You said

24 you saw the list and you recognized the photo on it to be your

14:53 25 driver's license photo.

14:53 1 A. Yes.

2 Q. Okay. Did you recognize the other photo of you on the
3 list to be you at the 7/7 -- the date The Cheesecake Factory
4 was shut down on 7/7?

14:53 5 A. Yes.

6 MS. BAYNARD: Okay. I have nothing further. Thank
7 you.

8 THE COURT: Anything further, Miss Motley?

9 MS. MOTLEY: Yes, Your Honor.

14:53 10 REDIRECT EXAMINATION

11 BY MS. MOTLEY:

12 Q. So, Miss Cross, what do you do for a living?

13 A. I'm a liaison for the Milwaukee Area Labor Council.

14 Q. And what do you do there? What is your job duties?

14:53 15 A. I just get new members to go out and volunteer in the
16 community.

17 Q. And how long have you had that job?

18 A. Couple months, and then I also do home care. I take care
19 of my old coworker's daughter.

14:53 20 Q. Okay. And do you have any relatives that live in
21 Wauwatosa?

22 A. No.

23 Q. Okay. And do you have -- With your job is it your duty
24 to, you know, study protests in the City of Wauwatosa?

14:54 25 A. No.

14:54 1 Q. Okay. So you heard attorney Baynard ask you about all
2 these specific protests. That's not your job at all, correct?

3 A. No.

4 Q. And for many of the protests that she mentioned you
14:54 5 weren't there or don't even know anything about them, correct?

6 A. Yes.

7 Q. Okay. Now, we talked about the Cheesecake Factory. Now,
8 that happened a month in July, a month after this list was
9 created in July, 2020, correct?

14:54 10 MS. BAYNARD: Objection. Foundation.

11 THE COURT: Sustained.

12 MS. MOTLEY: Your Honor, may I --

13 THE COURT: You may rephrase the question.

14 MS. MOTLEY: Okay. Thank you.

14:54 15 THE COURT: Please rephrase.

16 BY MS. MOTLEY:

17 Q. So you heard in the opening statements that one of the
18 facts that has been agreed to by both parties is that on
19 June 5th of 2020 defendant Dominick Ratkowski created a list.

14:55 20 MS. BAYNARD: Going to object to foundation, and I
21 think it misstates the -- I don't think that's an undisputed or
22 a fact that we've stipulated to in this case.

23 MS. MOTLEY: Your Honor, it is a fact that we
24 stipulated in this case. It's specific that on June 5th of
14:55 25 2020 civilian list -- defendant Dominick Ratkowski created a

14:55 1 list. That is the stipulation.

2 MS. BAYNARD: Your Honor, the list is fluid, and it
3 changed and it grew, and so I think asking her whether or not
4 she -- about the list as it was on June 5th when there's been
14:55 5 no evidence other than opening statement which isn't evidence
6 about the date the list started is improper, and this witness
7 doesn't have foundation to answer that question.

8 MS. MOTLEY: Your Honor, if I may respond. Her
9 objection was that's not a stipulation. That was a specific
14:55 10 stipulation that on or about --

11 THE COURT: Miss Motley, go ahead, please rephrase
12 the question, and let's see what the witness knows.

13 MS. MOTLEY: Okay. Thank you.

14 BY MS. MOTLEY:

14:56 15 Q. On June 5th of 2020 were you also aware that Dominick
16 Ratkowski created a list?

17 A. No.

18 Q. Okay. When did you become aware of that?

19 A. During the open records requests -- Or there was news
14:56 20 about in the open records request.

21 Q. Okay. Well, let's go back to the open records request.
22 You mentioned that you first heard or came to know that you
23 were on this target list through the Wisconsin Examiner; is
24 that accurate?

14:56 25 A. Yes.

14:56 1 Q. Okay. And is that when you found out that you were on the
2 list?

3 A. I'm not sure. It was some time during the period after
4 that the Wisconsin Examiner found out about the list.

14:56 5 Q. Okay. And do you recall when that was that you found out?

6 MS. BAYNARD: Objection. Asked and answered.

7 MS. MOTLEY: I never asked that question.

8 THE COURT: You may answer the question.

9 BY MS. MOTLEY:

14:57 10 Q. Do you recall when you found out that you were on this
11 target list?

12 A. Some time before the end of 2020.

13 Q. Okay. And are you concerned about being on this list?

14 A. Yes.

14:57 15 Q. Are you concerned about your information that's on this
16 list?

17 A. Yes.

18 Q. Okay. With regards to the questions that attorney Baynard
19 talked to you about, The Cheesecake Factory protests in July of
14:57 20 2020, you indicated that you were there, correct?

21 A. Yes.

22 Q. Okay. And you were on the microphone at some point during
23 these protests?

24 A. Yes.

14:57 25 Q. Okay. And you weren't arrested that -- for those

14:57 1 participating in those protests, correct?

2 A. No.

3 Q. Were you ever ticketed?

4 A. No.

14:57 5 Q. Were you ever questioned?

6 A. No.

7 Q. Were you ever contacted by any law enforcement officers?

8 A. No.

9 Q. Were you ever contacted by any law enforcement agencies?

14:57 10 A. No.

11 Q. Okay.

12 MS. MOTLEY: I have nothing further. Thank you.

13 THE COURT: Thank you. You may step down. Thank
14 you. Next witness, please?

14:58 15 MS. MOTLEY: Your Honor, plaintiffs would like to
16 call Luke Vetter, please.

17 MS. BAYNARD: Your Honor, could we have a sidebar?

18 THE COURT: Can we wait until after Mr. Vetter
19 testifies?

14:59 20 MS. MOTLEY: I think it's regarding the list and what
21 we can and cannot show.

22 THE COURT: All right. We could have a sidebar,
23 please.

24 (The following discussion was held at sidebar.)

14:59 25 MS. BAYNARD: I think we're both kind of in a -- I

14:59 1 think we're both kind of in agreement that the -- I guess the
2 version of the list should probably be decided before we get
3 into kind of like substantive, especially law enforcement
4 witnesses because our hope is that we call Vetter one time and
15:00 5 not -- and I know I think you want it to be decided, I -- for
6 us, I mean, that's kind of what I'm trying to avoid as to --

7 MR. SCHWAB: We're at that point.

8 MS. BAYNARD: It's unfortunately -- I don't want to
9 waste the Court's time any more either. I don't know if you
15:00 10 have plaintiffs that can go and like -- or there's a good
11 stopping point or --

12 MR. SCHWAB: We can't stop -- It's going to be a
13 sidebar at some point, right?

14 MS. MOTLEY: I guess maybe what we can come to is an
15:00 15 agreement that, okay, page one is okay, I don't think we're
16 going to have him paging through it, so I think there's certain
17 pages where we're okay with. So for me, page one I don't like
18 the G.D. thing or the --

19 THE COURT: If I may interrupt you, Miss Motley. I
15:00 20 had intended to give the jury their afternoon break at 3:30.
21 We can use that time to go through the list. Is there a short
22 witness we could have that will take us until 3:30 break?

23 MS. MOTLEY: Sure.

24 MR. SCHWAB: I don't know if this will take 30
15:01 25 minutes, though.

15:01 1 THE COURT: Might get it close?
2 MR. SCHWAB: I expect it's going to be consistent --
3 THE COURT: Do a witness, take a break, and then get
4 into this list. Okay.
15:01 5 (The sidebar discussion ended.)
6 MR. SCHWAB: Ready to proceed, Your Honor?
7 THE COURT: Yes, I'm ready to proceed. Mr. Schwab or
8 Ms. Motley, is it Mr. Schwab I'm calling on?
9 MR. SCHWAB: Schwab. Plaintiffs will next call
15:02 10 Sonora Larson.
11 THE CLERK: Please raise your right hand.
12 SONORA LARSON, called as a witness herein, after
13 having been first duly sworn, was examined and testified as
14 follows:
15:02 15 THE WITNESS: I do.
16 THE CLERK: Please have a seat and spell your first
17 and last names.
18 THE WITNESS: Sonora, S-O-N-O-R-A, Larson,
19 L-A-R-S-O-N.
15:02 20 DIRECT EXAMINATION
21 BY MR. SCHWAB:
22 Q. Good afternoon, Miss Larson.
23 A. Hi.
24 Q. If you'd like, you can raise the microphone, maybe scoot
15:02 25 up to it just to make sure we're --

15:02 1 A. Oh, yeah.

2 Q. -- speaking into the microphone so everyone can hear and
3 the court reporter can --

4 A. How's this?

15:03 5 Q. I think that's good. If you'd like to, like I said, you
6 can raise it if it would make you more comfortable instead of
7 leaning forward.

8 Ms. Larson, where do you currently live?

9 A. Boston, Massachusetts.

15:03 10 Q. And what is your job?

11 A. I am a baker.

12 Q. What type of baker?

13 A. Pastry.

14 Q. Okay. And has that been your profession for a little
15 while now?

16 A. Yes, either pastry cook or line cook for the past seven
17 years.

18 Q. Okay. And prior to moving to Boston, where did you live?

19 A. Riverwest in Milwaukee, Wisconsin.

15:03 20 Q. Okay. And where did you grow up?

21 A. Wauwatosa, Wisconsin.

22 Q. Okay. Do you have any relatives that live there?

23 A. Yes. My dad lives there still.

24 Q. Okay. And where did you graduate from high school?

15:03 25 A. Wauwatosa East High School.

15:03 1 Q. Okay. I want to turn your attention to the summer of
2 2020. Do you remember how you became first involved in, you
3 know, how you came to attend your first protest, your first
4 march, first demonstration?

15:04 5 A. Yes. After witnessing a demonstration occurring outside
6 my house after the killing of George Floyd.

7 Q. And was that here in Wisconsin?

8 A. Yes, that was in --

9 Q. Or, I apologize, here in Milwaukee?

15:04 10 A. Yes, Milwaukee, Wisconsin.

11 Q. Okay. So you participated in some of the early
12 demonstrations in Milwaukee?

13 A. Yes, I did.

14 Q. Okay. And at some point you found yourself also
15:04 15 participating in some of the TPR protests; is that correct?

16 A. Yes.

17 Q. How many would you say you participated in?

18 A. Approximately 80.

19 Q. Ah. Was that most days?

15:04 20 A. When I could, yes.

21 Q. And what did those protests, those marches look like?

22 A. Like others have described, large and then more small, but
23 regardless of size, I would say there is a community feel to
24 it, there were often families out there, and generally -- and
15:05 25 uplifting spirit.

15:05 1 Q. Okay. How long would you march when you marched with
2 the -- with these groups?
3 A. Up to seven hours.
4 Q. Covering miles?
15:05 5 A. Yes, covering miles.
6 Q. Did you ever carry a sign?
7 A. Yeah.
8 Q. Frequently?
9 A. Yeah.
15:05 10 Q. Did you chant?
11 A. Yeah.
12 Q. Did you ever commit a crime?
13 A. Not to my knowledge, no.
14 Q. Did you ever break a window?
15:06 15 A. No.
16 Q. Did you ever graffiti a building?
17 A. No.
18 Q. Did you ever commit any violence?
19 A. No.
15:06 20 Q. Okay. Did you ever see an ambulance stopped by a protest
21 movement?
22 A. No, the opposite.
23 Q. Okay. Were these well organized?
24 A. As well as you can organize.
15:06 25 Q. People would go up and stop traffic?

15:06 1 A. Oh, absolutely. In terms of traffic flow, yes. Very well
2 organized.
3 Q. Okay. So the goal wasn't to obstruct traffic, right?
4 A. No.
15:06 5 Q. And, for example, if there had been an ambulance, there
6 were people that would've been assigned to make room for that,
7 right?
8 A. Absolutely. Yes.
9 Q. And you said there were like up to seven hours?
15:06 10 A. Yes.
11 Q. Were there some vehicles that had supplies?
12 A. Oh, yes.
13 Q. What types of supplies?
14 A. Water, Band-Aids, you know, like the big chip -- the boxes
15:07 15 with all the different kinds of little chip bags, those kind of
16 things. Yeah.
17 Q. Okay. And like I said, you were -- you were out
18 protesting in your own hometown, right?
19 A. Yes.
15:07 20 Q. Did that play a role in your involvement?
21 A. One hundred percent.
22 Q. Okay. Did any police officers ever reach out to you?
23 A. No.
24 Q. Anyone show up at your door to ask any questions?
15:07 25 A. No.

15:07 1 Q. Anyone ever reach out to you over your Facebook account to
2 ask you questions?
3 A. No.
4 Q. No police ever -- No police officer ever called you to
15:07 5 conduct an investigation?
6 A. No.
7 Q. An interview?
8 A. No.
9 Q. Okay. But at some point you did learn that you had been
15:07 10 placed on this target list, right?
11 A. That I did.
12 Q. Okay. And what did that mean to you?
13 A. To me that meant that what -- while I was doing what I
14 felt was right, others were villanizing me for it.
15:08 15 Q. Did it scare you?
16 A. Yes.
17 Q. Does it scare you?
18 A. Yes.
19 Q. Did you ever shout at part of a protest, here's my
15:08 20 address?
21 A. No.
22 Q. Did you ever chant your birth -- your date of birth?
23 A. No.
24 Q. Did you ever consent to giving a police officer your --
15:08 25 your home address?

15:08 1 A. No.

2 Q. You ever give a police officer your driver's license
3 picture?

4 A. No.

15:08 5 Q. Okay. And anyone ever reach out to you, ask you if it was
6 okay to use that private information?

7 A. Nobody ever did that.

8 Q. And did anyone ever reach out to see if it was okay to
9 disclose your private information?

15:08 10 A. No.

11 MR. SCHWAB: No further questions.

12 THE COURT: Thank you, Mr. Schwab. Mr. Wirth?

13 MR. WIRTH: Briefly.

14 CROSS-EXAMINATION

15:09 15 BY MR. WIRTH:

16 Q. You were at roughly 80 protests; is that correct?

17 A. Yes.

18 Q. And how many of those were in Wauwatosa?

19 A. 30 to 40.

15:09 20 Q. So you were a fairly regular attendee at the Tosa
21 protests?

22 A. Yes.

23 Q. You were asked whether or not you had ever committed a
24 crime, and you said not to my knowledge, correct?

15:09 25 A. Correct.

15:09 1 Q. You were, however -- You did, however, receive ordinance
2 citations from the City of Wauwatosa, true?
3 A. True.
4 Q. One of them was in August for operating your vehicle
15:09 5 without its lights on?
6 A. Yes.
7 Q. Why were you driving on August 27th, 2020, with your
8 lights off?
9 A. I had just started my car and had not yet turned them on.
15:10 10 Q. You weren't already on the street in a moving vehicle?
11 A. Not that I recall.
12 Q. If the officer cited you for moving -- a moving vehicle
13 with your lights off, would you disagree that's what you were
14 doing?
15:10 15 A. I did disagree, yes.
16 Q. Were there protests in which the protesters were driving
17 in the street on the route with their lights off?
18 A. Not to my knowledge.
19 Q. You indicated that there was, however, occasions where the
15:10 20 protesters would stop traffic; is that correct?
21 A. Yes.
22 Q. Kind of at the tail end of the pretests you were also one
23 of the attendees who were cited for being out during the
24 curfew, correct?
15:10 25 A. Yes.

15:10 1 Q. You received a citation for that, correct?

2 A. Yes.

3 Q. With respect to the first citation for driving without a
4 license -- without your lights properly operated, was that
15:11 5 handed to you or mailed to you?

6 A. I believe -- I don't recall.

7 Q. With respect to the citation for being out after curfew,
8 was that handed to you or mailed to you?

9 A. I do not recall.

15:11 10 Q. On 9/2/22 you were at the mayor's residence for a protest,
11 correct?

12 A. I -- I cannot confirm that date.

13 Q. During one of your protests, irrespective of the date,
14 during one of your protests you actually Facebook Live videoed
15:11 15 your participation, correct?

16 A. I believe so.

17 Q. And that is on your public Facebook page?

18 A. I am unaware of what is on my public Facebook page at the
19 moment.

15:11 20 Q. What is a live -- What is a Facebook Live video?

21 A. A Facebook Live video is when you stream to the internet
22 simultaneously as something is happening.

23 Q. And what were you filming when you were streaming to the
24 internet simultaneously to the protests at the mayor's home?

15:12 25 MR. SCHWAB: Objection, Your Honor. Foundation.

15:12 1 THE COURT: It's sustained as to the location of this
2 protest.

3 BY MR. WIRTH:

4 Q. Well, you were at the mayor's home, correct?

15:12 5 A. I have attended a protest at the mayor's home.

6 Q. Your uncertainty was whether it was the 9/2/22 date?

7 A. Correct.

8 Q. Okay. So while you were at the mayor's home, what were
9 you Facebook Live streaming?

15:12 10 A. From what I recall as to live streaming at the mayor's
11 home I remember a confrontation -- a verbal confrontation
12 between a young man and a police officer who had showed up to
13 our protests at the mayor's home, and I recall live streaming
14 that confrontation as well as the pepper spraying that occurred
15 of the young man.

16 Q. You were a witness to that, correct?

17 A. I was a witness to that.

18 Q. And with respect to your protest at the mayor's house, did
19 it go past midnight?

15:13 20 A. I could not tell you that, but it doesn't sound -- I was
21 very rarely in Wauwatosa after midnight.

22 Q. Were there times where you were protesting at the mayor's
23 house until 2:00 in the morning?

24 A. Not to my knowledge, no.

15:13 25 Q. But Facebook Live is a contemporaneous representation,

15:13 1 correct?

2 A. In the --

3 Q. For instance, if you're filming at 2:00 in the morning, or
4 if the stream is at 2:00 in the morning, that's when you're
15:14 5 filming, correct?

6 A. Potentially.

7 Q. And is that also something that could then thereafter be
8 saved on your Facebook page?

9 A. Yes, it could be saved on my Facebook page. Also if
15:14 10 something is published at 2:00 a.m., then it's very different
11 than it being streamed at 2:00 a.m.

12 Q. No argument with you there. But with respect to what you
13 were Facebook Live streaming, you were a witness to some form
14 of physical confrontation between a protester and a police
15:14 15 officer, correct?

16 A. I was.

17 MR. WIRTH: Then I don't have anything further.

18 THE COURT: Thank you. Anything further?

19 REDIRECT EXAMINATION

15:14 20 BY MR. SCHWAB:

21 Q. You saw a physical confrontation at this event?

22 A. At this event, yes.

23 Q. Did the protestor use physical violence against the police
24 officer?

15:14 25 A. No.

15:14 1 Q. Did the police officer use physical violence against the
2 protester?

3 A. In that he dispersed pepper spray into this protester as
4 well as my face, yes.

15:15 5 Q. And you actually filed a complaint?

6 A. Yes, I did file a complaint.

7 Q. Did the police respond to that complaint?

8 A. I recall receiving a letter that -- I don't know the
9 proper terminology, but it said that my complaint was
10 essentially null and that it did not matter.

15:15 11 Q. So you have video of the police using pepper spray on
12 someone and the police did not investigate this?

13 A. Yes.

14 Q. Okay. Even though you told them to?

15:15 15 A. I -- Yes.

16 Q. And you were willing to provide them the video?

17 A. I was, yes.

18 Q. Okay. When you were at the mayor's house did you break
19 any of his windows?

15:15 20 A. No.

21 Q. Did you commit, you know, any crimes?

22 A. No.

23 Q. And that protest ticket we talked about, do you remember
24 when the protests started, the curfew started?

15:15 25 A. 7:00 p.m.

15:15 1 Q. So it was still light out?
2 A. Yes.
3 Q. Okay. And these two tickets they mentioned --
4 A. Yes.
15:16 5 Q. -- was jail time ever on the table?
6 A. No, as far as I'm concerned they were municipal tickets.
7 Q. They were just monetary citations, right?
8 A. Yes.
9 Q. Okay. So not criminal conduct?
15:16 10 A. No.
11 MR. SCHWAB: No further questions, Your Honor.
12 THE COURT: Thank you, Mr. Schwab. Thank you.
13 MR. WIRTH: May I just do one?
14 THE COURT: Very quickly.
15:16 15 MR. WIRTH: Recross very quickly.
16 THE COURT: Very quickly.
17 RECROSS-EXAMINATION
18 BY MR. WIRTH:
19 Q. You attended the morning session with the openings,
15:16 20 correct?
21 A. I did not.
22 Q. Oh, you were not here for the opening statements?
23 A. No.
24 Q. If one of the categories mentioned by the attorneys was
15:16 25 witnesses with respect to this incident, you were a witness?

15:16 1 A. Was that a question?

2 Q. Yes.

3 A. Could you rephrase it?

4 Q. I'll put a question mark on the end of it. Yeah, I'll

15:16 5 rephrase it.

6 You were a witness to what occurred on the night that

7 there was a protest at the mayor's house, correct?

8 A. If I was there, I witnessed it, yes.

9 Q. And you filmed it?

15:16 10 A. Yes.

11 Q. Okay.

12 MR. WIRTH: That's all. Nothing further. Thank you.

13 MR. SCHWAB: Your Honor, briefly one re-redirect?

14 THE COURT: Last one.

15:17 15 REDIRECT EXAMINATION

16 BY MR. SCHWAB:

17 Q. Did anyone from the police department ever reach out to
18 you to ask any questions including follow-up on your complaint
19 about this incident?

15:17 20 A. No.

21 THE COURT: Okay. Thank you. You may step down now.

22 Ladies and gentlemen of the jury, I think we have earned our
23 afternoon break, so you could use a facilities and stretch and
24 refresh. Let's take 15 minutes, please.

15:17 25 THE BAILIFF: All rise.

15:17 1 (The jury was excused.)

2 THE BAILIFF: You may be seated. All right.

3 Returning to the list, I have document 385 and 387 in front of
4 me. When we last talked, we had gone over the objection on
15:18 5 page one. I believe there were no further objections on page
6 one; is that correct? Is that correct, Miss Motley?

7 MS. MOTLEY: Your Honor, I just wanted to be clear.
8 For the sentence above Julio Coleman's name, it -- I'm sorry,
9 we don't have a problem with that, but we do have a issue with
15:18 10 the likely a G.D.

11 THE COURT: I already ruled on that.

12 MS. MOTLEY: I'm sorry.

13 THE COURT: Yeah, it's been a long day, I already
14 ruled that since it's not part of the expected justification
15:18 15 that it would be redacted.

16 MS. MOTLEY: Okay. Thank you.

17 THE COURT: All right. So nothing further on page
18 one. What's the next page, and again I'm using that 29-page
19 document, if you tell me what page -- what is the next
15:19 20 objection?

21 MR. WIRTH: Judge, the next one that I can see, I
22 don't have my paper open in front of me, but the next one that
23 I can see is Gaige Grosskreutz.

24 THE COURT: Can you please give me a page number?
15:19 25 Because I have the documents, they have page numbers.

15:19 1 MR. WIRTH: Apparently it's on page six.
2 THE COURT: Yes. Page six, Gaige Grosskreutz.
3 MR. WIRTH: Grosskreutz.
4 THE COURT: Grosskreutz.
15:19 5 MR. WIRTH: The -- The difficulty with the redaction
6 there is that what's been redacted is the very -- or one of the
7 very reasons he's on the list. Mr. -- Mr. Grosskreutz -- I'm
8 German, I should understand this -- acts as armed security on
9 the perimeter of the group. The police need to know that.
15:19 10 That's one of the reasons he's on the list.
11 THE COURT: Miss Motley, do you wish to be heard?
12 MR. SCHWAB: Your Honor, this was made, a statement
13 made by an individual at crime analyst who we actually don't
14 have any real intelligence on this. This is speculation on his
15:20 15 part. Additionally, there's -- we've redacted this hit list
16 heavily, and there's a particular --
17 MS. BAYNARD: Yeah, let's stop calling it a hit list.
18 MR. SCHWAB: I didn't call it a hit list.
19 MS. BAYNARD: You just said hit list.
15:20 20 MR. WIRTH: You just did.
21 MS. BAYNARD: You said a hit list.
22 MR. SCHWAB: I said this list. I'm sorry, I
23 enunciated poorly. I've never called it the hit -- a hit list.
24 I apologize if I did.
15:20 25 There is an additional sensitivity to Mr. Grosskreutz,

15:20 1 especially if we're talking about this being made public or
2 displayed in open court. Mr. Grosskreutz was one of the
3 Rittenhouse victims, so I think it -- the extra degree of
4 sensitivity, especially to wild accusations that he is an armed
15:21 5 security guard without any additional, you know, information
6 that it's just incredibly concerning, especially if we're
7 redacting this list for all these other protective purposes.

8 THE COURT: We're not redacting for other protective
9 purposes. Again, we are redacting from non-plaintiffs. On the
15:21 10 first page the reference to the G.D. was redacted because it
11 does not connect to the expected explanation as to why it's on
12 the list. So we're not just wildly redacting for all other
13 purposes.

14 All right. As to the notation next to Mr. Grosskreutz's
15:21 15 name, if the anticipated testimony is that this is relevant as
16 to why he's on the list, it will remain. The next one?

17 MR. WIRTH: I'm going down the list. We are now down
18 to, it appears to be page 19.

19 THE COURT: Just give me a moment to get there,
15:22 20 please. All right. I am on page 19.

21 MR. WIRTH: You'll see that there are at least, with
22 respect to Exhibit 385, there are one, two, three, four -- four
23 plaintiffs, and I'm trying to call up the -- four plaintiffs
24 who have redacted -- information redacted. I'm trying to call
15:22 25 up the -- Oh, it mentions their arrests. They're -- They've

15:22 1 redacted out the fact that these people are on -- because they
2 were arrested.

3 THE COURT: All right. I am on page 19. I actually
4 have three versions in front of me. Plaintiff, defendant, and
15:22 5 the unredacted, and it appears to have those dates. So,
6 Ms. Motley, are you addressing this or Mr. Schwab addressing
7 this?

8 MS. MOTLEY: I am, Your Honor.

9 THE COURT: As to the first entry which relates to
15:22 10 Mr. Fanning?

11 MS. MOTLEY: Yes, Your Honor. If it's okay with the
12 Court, I can tell you the thinking for all four, because it's
13 the same sort of explanation.

14 THE COURT: Yes, please.

15:23 15 MS. MOTLEY: So it was my understanding that anything
16 with regards to potential, you know, criminal implications or,
17 you know, any sort of crime implications was not to come in,
18 and so that's why I redacted this.

19 With regards to these particular -- these four plaintiffs,
15:23 20 they were all arrested for a noncriminal ticket, and, you know,
21 frankly, I'm hearing something different from the defense
22 counsel, I -- which, you know, the story keeps changing that I
23 thought this was an investigatory tool and essentially a phone
24 book, but now, oh, that was put on there because he was
15:23 25 arrested.

15:23 1 You know, so we -- we redacted that because it's
2 prejudicial, and I'm concerned that it will give it a criminal
3 element to which, you know, it's a citation, that's why those
4 four particular plaintiffs were arrested, and actually those
15:24 5 four plaintiffs are also on the claim involving Joseph Roy, and
6 I believe those four citations are in the dump, the Dropbox
7 link dump which shows that it's a citation.

8 THE COURT: All right. Thank you. Mr. Wirth or
9 Miss Baynard?

15:24 10 MR. WIRTH: Miss Baynard can handle this one.

11 MS. BAYNARD: I guess going to the criminality, we
12 agreed that we were not going to refer to the plaintiffs as
13 criminals because not all of them had committed crimes, but
14 that has -- I guess my understanding was not that we would be
15:24 15 redacting Dominick Ratkowski's notations on this list because
16 it indicates that somebody was arrested, or their arrest date
17 or has a booking photo.

18 So I think that it's improper to redact information from
19 the list, and if he testifies that, oh, it had nothing to do
15:25 20 with why I added them, well, that's one thing. I don't
21 anticipate the testimony to be that. It's relevant to why
22 people are included on this list, and I don't think we referred
23 to all the plaintiffs as criminals, and we don't intend to.

24 THE COURT: Well, you're not allowed to.

15:25 25 MS. BAYNARD: Exactly. We don't intend to.

15:25 1 THE COURT: Okay. So as I made clear at the
2 pre-trial conference, no one will be categorically referred to
3 as criminals, so we had already settled that.

4 As to the arrest date, if it relates to the justification
15:25 5 as to why an individual plaintiff is on the list, it remains on
6 the list, however, the parties should clarify that we're
7 talking about the -- when it says arrest, either in direct or
8 cross-exam point out that the arrest in question is regarding
9 citations or ordinance and not criminal conduct.

15:26 10 MS. MOTLEY: Your Honor, may I add to that?

11 THE COURT: Yes.

12 MS. MOTLEY: I just simply add that if this
13 particular page is shown, that it's, you know, in the way the
14 Court is saying, it should be unredacted, it only be shown once
15:26 15 that evidence does come out. Like I'm concerned that we have,
16 you know, Luke Vetter testifying, and then we show every page.
17 We don't have to show every page with every witness.

18 THE COURT: I think I mentioned this too at one of
19 the final pre-trial conferences. Nothing should be and will be
15:26 20 allowed to be published to the Court until the evidence is in
21 and the exhibit has been admitted, so we're not just randomly
22 flashing things before the jury.

23 MS. MOTLEY: Thank you.

24 THE COURT: So I think your question and comment goes
15:26 25 to foundation, relevant with a particular witness.

15:26 1 MS. MOTLEY: Thank you.

2 THE COURT: So that's page 19. Next page?

3 MR. WIRTH: I think most of it wraps up on 19. Yeah,
4 because there are -- there's four curfew violations are on 19.
15:27 5 Let me just make sure. Yeah, then we just get to Facebook
6 URL's and -- and vehicles which are all --

7 THE COURT: If you please be specific as to what page
8 I should be looking at.

9 MR. WIRTH: Right. We're -- When we get down to
15:27 10 page 27, we start with just vehicle identification and there
11 are no more plaintiff redactions after that, so -- so I think
12 that once we -- I think that 19 wraps up the pages on which
13 plaintiffs' materials had been redacted.

14 THE COURT: All right. So what I'm hearing is there
15:27 15 are no further objections on this document that I need to
16 address.

17 MR. WIRTH: Yes, I believe that's correct. My only
18 hesitation is I haven't compared the vehicle, the unredacted
19 vehicle to the redacted vehicles. I have no -- I have no
15:28 20 doubt that plaintiffs couldn't redact from his vehicle, so I
21 think we're -- I think we're set as to page 19.

22 THE COURT: Miss Motley, is there any additional
23 objection to address regarding this exhibit?

24 MS. MOTLEY: Just one, Your Honor. I just want to be
15:28 25 clear for page one.

15:28 1 THE COURT: Yes.

2 MS. MOTLEY: Am I allowed to show what we filed as
3 docket 285 where we redacted out the likely G.D. and we also
4 redacted the sentence above that? Is this okay to show that?

15:28 5 THE COURT: 385, the sentence above remains for the
6 reasons we discussed earlier, but your redaction of the G.D. is
7 appropriate. So we need a version that has the line visible
8 and the G.D. blocked.

9 MS. MOTLEY: Thank you, Your Honor. I'm happy to
15:29 10 do -- for plaintiffs' to do that, it just takes a minute to
11 redact, because you have to redact everything, so I'm
12 concerned --

13 MR. WIRTH: Judge, with respect to 387, the defense,
14 all we would have to do is redact likely a G.D., and then it
15:29 15 would be done.

16 MS. MOTLEY: Your Honor, the issue with their exhibit
17 is they're blacking out whole pages when we know that they are
18 individual entries that it's really important.

19 MS. BAYNARD: I mean, I guess, you know, we've
15:29 20 already gone through opening statements and we've argued about
21 this a lot and we said, look, we're not talking about
22 plaintiffs that are not -- people that are not plaintiffs and
23 we're not talking about claims. The jury can see the full,
24 that's 29 pages, and I think there's even testimony in the
15:29 25 opening that there's 400 people on here.

15:29 1 MS. MOTLEY: 200.

2 MS. BAYNARD: I heard 400 that all have their highly
3 restricted information, and the Court already ruled that we
4 were not going to be discussing parties that did not have
15:30 5 claims and individuals -- including individuals who are no
6 longer plaintiffs and then showing the list that has -- and
7 saying there's 200 people on this. I mean, that is extremely
8 unfairly prejudicial.

9 THE COURT: All right. I believe I also addressed
15:30 10 this at the final pre-trial conference, that is because there
11 was a discussion about whether there could be an exhibit that
12 just shrank it down to just the remaining plaintiffs, and I had
13 ruled that the full exhibit so that the jury, although not
14 having a view of the non-plaintiffs, see what the exhibit
15:30 15 looked like, and that's the 29 pages and with the entries
16 blocked out.

17 So I believe the way the plaintiffs have it is
18 appropriate, that it blocks out individual non-plaintiffs. So
19 that's consistent with my ruling on that. But now we are
15:31 20 almost at the point of splitting hairs here on this exhibit.

21 MS. MOTLEY: And, Your Honor, if I can just correct
22 the record? That's correct, that's how -- as I remember the
23 ruling, and I don't -- which is why I was surprised during
24 opening, I recall the Court saying we could talk about there
15:31 25 being 200 people on this list. I mean, the list is the list.

15:31 1 They're just trying to reimagine this document that was
2 created. What we couldn't do is say, you know, this person and
3 this -- like talk about non-plaintiffs in that which is not --
4 that's what I understood it to be, we could talk generally
15:31 5 about it, but not specific to non-plaintiffs.

6 THE COURT: You could talk generally about the scope
7 of the list, you cannot talk about non-plaintiffs nor can you
8 infer that the non-plaintiffs also have DPPA -- DPPA
9 violations. They're not present, and current plaintiffs cannot
15:32 10 assert standing in the place of the non-plaintiffs, so a
11 reference can't be made, everybody -- it's 200 violations,
12 every individual in here has been violated. What is before
13 this jury is the identified plaintiffs who are in court for
14 trial for, the 57.

15:32 15 MS. BAYNARD: That's what came --

16 MS. MOTLEY: -- how my rights were violated, I'm
17 happy with my -- it should be unredacted.

18 THE COURT: You are not -- You cannot be both a
19 party of interest, a witness, and attorney in the case as you
15:32 20 well know, Ms. Motley.

21 MR. SCHWAB: Your Honor, before we move on, and I'm
22 not, you know, not expecting argumentation, just for the
23 purpose of the preservation, we want to just once again state
24 that we believe the information contained in this document
15:32 25 unredacted is relevant, and that is our preference. I'm not

15:33 1 trying to get into it right now, just for the purposes of
2 appeal, wanted to put that on the record.

3 THE COURT: Thank you, Mr. Schwab. The record is
4 made. Anything else on this list before we move on?

15:33 5 MR. WIRTH: Just one more thing, or to kind of wrap
6 up and see where we ended here. If -- Before this thing can
7 get redacted, if we have like Vetter testify, which list can he
8 be handed? Because some of what he's going to testify is
9 what's been redacted and won't show up on the red list versus
15:33 10 the blacked out list.

11 MS. MOTLEY: Your Honor, may I respond to that?

12 THE COURT: Yes.

13 MS. MOTLEY: I believe for the specific entries, I
14 mean, I understand that Dominick Ratkowski made this list, that
15:33 15 he's the one to be -- talk about the specific entries, he did
16 this. I don't have any testimony that Vetter added anything to
17 this list.

18 THE COURT: So I'm understanding that response that
19 this exhibit will not be used with witness Vetter, am I correct
15:34 20 in my understanding?

21 MS. MOTLEY: No. I -- I don't know, Your Honor. I
22 just don't know what's going to be said by him. That's the
23 problem. You know, people testify in depositions one way, then
24 they say, you know, it just hasn't been consistent, so --

15:34 25 THE COURT: All right. I understand that. So long

15:34 1 that nothing -- nothing is published to the jury that has not
2 been approved. And no questions to the -- no questions in
3 front of the jury to witness Vetter inconsistent with the
4 ruling regarding the list.

15:34 5 MS. MOTLEY: Thank you.

6 MR. WIRTH: And what if one of the questions that we
7 don't know what's going to be asked, the only way Vetter can
8 answer it is if he sees the unredacted material for the
9 plaintiff? If you -- If we hand him something that has a
10 material redacted and say, why or what or when, and he looks at
11 it and says, I -- I don't know from this, but if that redaction
12 were gone, he would know from this.

13 THE COURT: All right. So as -- redaction as to
14 whom?

15:35 15 MR. WIRTH: The -- I thought the -- I thought the
16 conversation was going to end with, right, we're not going to
17 hand the list in any form to somebody like Luke Vetter, that's
18 the Ratkowski list. But why would we hand the list to Luke
19 Vetter?

15:35 20 THE COURT: I don't know. And I'm hearing plaintiff
21 does not know because they don't know what Mr. Vetter will
22 testify to, so witnesses have to testify about information
23 within their firsthand knowledge, so that -- I hope that guides
24 the examination, it has to be within -- within their firsthand
15:35 25 knowledge, and we'll take it from there if we must.

15:35 1 MS. MOTLEY: Thank you.

2 THE COURT: All right. Lastly, I want to return back
3 again to Mr. Weber before we take our break. I believe,
4 Ms. Baynard, you were reaching out?

15:36 5 MS. BAYNARD: Yeah, I did. I did not -- I just got
6 a voice mail, and I looked through the -- so he called and it
7 got forwarded to our -- I mean, our after hours, so that's
8 where the information came that he's gone. I think he might be
9 back tomorrow, or whatever day the 3rd is. He said late on the
15:36 10 2nd. I don't know if he's flying into Chicago. I don't know
11 if he's flying into -- or -- I don't know if he's actually not
12 there, but that's the information that I have.

13 And to the point of -- And I asked attorney Motley to
14 send us a copy of the subpoena, because we never received it,
15:36 15 but if we want to readdress the issue of Weber and the policies
16 that I guess he was purportedly going to speak about, and
17 again, I don't want to take up time when the jury's here, but I
18 have taken a look at the two policies and I believe plaintiffs'
19 Exhibit 3 that they were going to have Barry Weber purportedly
15:37 20 speak on, it was not the policy that was in place on the time
21 of the violation, that policy had been rescinded and there was
22 a different open records policy in effect on -- starting
23 July 27th, 2020, so that would've been at the time of
24 Ratkowski's disclosure.

15:37 25 So my thought was if we were going to have Luke Vetter

15:37 1 testify about it, he could testify just to -- to that, and then
2 we can see if we hear back from Barry Weber on Wednesday, but
3 like I said, I don't have a copy of the subpoena yet, I'm going
4 to get a copy from Kim, and --

15:37 5 THE COURT: Miss Motley?

6 MS. BAYNARD: Miss Motley. Sorry. And then we
7 will -- I'll try to get ahold of him when he gets back.

8 MR. WIRTH: I think it's possible we might be able to
9 secure his appearance on the 4th.

15:38 10 THE COURT: All right. Miss Motley?

11 MS. MOTLEY: Your Honor, I think, and I hate to do
12 this, it's possible that, you know, as this trial goes on maybe
13 we won't need him, but we would like to secure his appearance,
14 that would be great.

15:38 15 With regards to the policy, we disagree with that, you
16 know, that was the DPPA policy, you know, that's why we're
17 having him testify, so --

18 MS. BAYNARD: I mean, that's what -- if that's why
19 he's coming, I guess I was trying to make it easier for
15:38 20 everybody that it wasn't the policy that's in place. I have
21 the policy that was effective and it says this policy rescinds
22 16-00, Driver Protection Act. That's what I was trying to --
23 If that's what we were having him testify to go around all
24 this, I was going to say, if that clears anything up.

15:38 25 MS. MOTLEY: Your Honor, the -- I know I looked last

15:38 1 week, but the current DPPA policy, which is our exhibit, is at
2 least thought last week when -- I think it's still on the
3 Wauwatosa Police Department's -- No, I have these. But thank
4 you.

15:39 5 MS. BAYNARD: No, those are -- Yeah. Yeah, yours is
6 three, it's on the top.

7 MR. WIRTH: But to address --

8 MS. MOTLEY: These are open records request policies.
9 We're talking about the DPPA policy. And so that's the issue.
10 The Driver's Privacy Protection Act. It's still on their
11 website, it still is the policy, I believe. It's currently on
12 their website right now. That's what we're talking about. And
13 this isn't a case about open records, this is a case about the
14 DPPA.

15:39 15 THE COURT: All right. We're eating into your little
16 break time. With respect to Mr. Weber, I encourage the parties
17 to keep -- have conversations to see whether this can be done
18 through cooperation, and if the parties -- plaintiffs need me
19 to take action, I will need the server to testify and make a
15:40 20 record about his -- his or her, I think it's a he, to serve
21 Mr. Weber so we can have a record on this issue.

22 MS. MOTLEY: Thank you.

23 MR. WIRTH: And like I said, Judge, I think it's
24 after midnight now where he is, but we will -- we will
15:40 25 facilitate his appearance on the 4th if that's what we want to

15:40 1 do.

2 THE COURT: All right.

3 MS. BAYNARD: I don't mean to --

4 MR. WIRTH: I shouldn't promise anything. Yeah.

15:40 5 THE COURT: All right. So the parties will keep
6 talking and working on that. Okay. You get maybe 10. You
7 used up some of your time, so you can take 10, give our court
8 reporter a break. Thank you.

9 THE BAILIFF: All rise.

15:40 10 (A recess was taken.)

11 (The jury is in the box.)

12 THE COURT: All right. Good afternoon again, ladies
13 and gentlemen of the jury, we are now getting to our last hour
14 before the end of our first day. Plaintiffs ready to proceed?

15:56 15 MS. MOTLEY: Yes, Your Honor. We'd like to call Luke
16 Vetter, and I believe attorney Wirth is going to get him.

17 THE COURT: Thank you.

18 MS. MOTLEY: May I --

19 THE COURT: Yes, yes.

15:57 20 THE CLERK: Raise your right hand.

21 LUKE VETTER, called as a witness herein, after having
22 been first duly sworn, was examined and testified as follows:

23 THE WITNESS: I do.

24 THE CLERK: You can have a seat. And state and spell
15:57 25 your first and last name.

15:58 1 THE WITNESS: First name is Luke, L-U-K-E, last name
2 is Vetter, V., as in Victor, E-T-T-E-R.

3 DIRECT EXAMINATION

4 BY MS. MOTLEY:

15:58 5 Q. Good afternoon. I believe it's Captain Vetter?

6 A. Correct. Good afternoon.

7 Q. Thank you. Captain Vetter, thank you for being here today
8 on short notice. I wanted to talk to you a little bit about
9 what it takes to become a Wauwatosa police officer. Could you

15:58 10 please explain to us the process by which someone can become a
11 Wauwatosa police officer?

12 A. There's a lot of steps in there, but generally speaking
13 they apply, they have to have certain level of college credit,
14 they need to go through a physical agility test, interviews,
15:58 15 background investigation, medical tests, then they have to go
16 to a police academy for about four or five months and pass
17 that. And then they go through extensive training at the
18 police department for about a year before they are -- truly
19 become a full-fledged officer.

15:59 20 Q. Okay. So, okay, so you apply for the job, right? And
21 then you get a call for an interview; is that what I'm
22 understanding?

23 A. I don't know if an interview is the first step.

24 Q. Okay. Sorry. What is the first step?

15:59 25 A. The hiring process is not specifically in my bureau. Once

15:59 1 those applicants get to a point where they are going to be
2 hired, background investigations, that's when I'm brought in,
3 so the first step probably is an application.

4 Q. Okay. So I guess this is a better question, I'm sorry.
15:59 5 So from application to hire, approximately how long does that
6 take?

7 A. It depends. It could take anywhere from three months to
8 six months to occur.

9 Q. Okay. And then once you're hired as a Wauwatosa police
16:00 10 officer, are you automatically let on the streets? Is there a
11 probationary period? How does that work?

12 A. It depends if you're a certified officer or not when
13 you're brought on.

14 Q. Okay. So explain that.

16:00 15 A. A certified officer is someone that has been a police
16 officer at a different agency. They can be brought on
17 immediately and then they start training on the streets, but
18 again, they are not a full-fledged solo officer for about a
19 year after that point.

16:00 20 Q. Okay. So am I hearing correctly that if you come in and
21 have prior law enforcement experience and -- or if you come in
22 as a new officer, it takes at least a year to become a
23 full-fledged Wauwatosa police officer; is that accurate?

24 A. Correct.

16:00 25 Q. Okay. Thank you. And for that year's time period, are

16:00 1 you -- Do you shadow another officer? How does -- for a
2 new -- Let's just stick to new officers. Do they get -- Is
3 there a field training officer that they have to follow?
4 A. So there's a lot of questions there, but they do have a
16:01 5 field training officer that they train with for about three
6 months, they have -- then they have a solo period where they're
7 on their own and are shadowed randomly and have biweekly or
8 monthly check-ins and evaluations until they get to that one
9 month -- or, excuse me -- that one year service mark.
16:01 10 Q. Okay. Thank you. And is it fair to say there's a lot of
11 training that's involved for a Wauwatosa police officer?
12 A. Yes.
13 Q. Okay. And how long have you been with the Wauwatosa
14 Police Department?
16:01 15 A. I'm in my 22nd year.
16 Q. Okay. Wow. And so how -- could you please explain sort
17 of the, I guess, the organize chart of, you know, the Wauwatosa
18 Police Department?
19 A. The organizational chart -- chart starts with the chief of
16:01 20 police. Underneath the chief are three captains, and each
21 captain runs a separate and distinct bureau. Those bureaus are
22 the patrol bureau, the administrative bureau, and the support
23 services bureau.
24 Underneath each of those bureaus there are various numbers
16:02 25 of lieutenants that supervise different units within the

16:02 1 bureau, and then underneath those lieutenants are sergeants
2 that usually run each of those units. Underneath those
3 sergeants are then detectives and/or officers.
4 Q. Okay. And so are detectives and officers, are they at the
16:02 5 same level or are officers sort of below detectives?
6 A. It depends on the situation.
7 Q. Okay. But generally speaking are officers below
8 detectives?
9 A. It depends on the situation.
16:02 10 Q. Okay. So is there anyone under detectives and officers?
11 A. On the sworn side, no.
12 Q. Okay. So we have the chief is top, and then under him are
13 three captains and you're one of the three captains, correct?
14 A. Correct.
16:03 15 Q. And then under the captains are lieutenants and then
16 sergeants and then detectives and police officers depending on
17 the situation?
18 A. Correct.
19 Q. Okay. Thank you. And as part of the police academy or
16:03 20 training, are officers required to, you know, know how to look
21 peoples' private information up in the D.O.T. system?
22 A. As part of which training? I missed the --
23 Q. Their training.
24 A. It is part of their training, yes.
16:03 25 Q. Have you ever looked anybody up in the time system?

16:03 1 A. Yes.

2 Q. Okay. Is there any officer with the Wauwatosa Police
3 Department that does not have the ability or the access to look
4 somebody up in the time system?

16:04 5 A. All sworn staff will have access.

6 Q. Okay. And is that sort of basic training that everyone
7 has to -- that sworn officers have to know how to look people
8 up in the time system?

9 A. Correct.

16:04 10 Q. Okay. And what does that training consist of?

11 A. It's training that they receive at the academy, they
12 receive on-the-job training, and then there's, I believe it's
13 maybe biannual training that's required through the State of
14 Wisconsin as well.

16:04 15 Q. Okay. And a person that goes through the academy, is that
16 before they're hired as an officer of Wauwatosa?

17 A. No, usually they're hired and then they are sent to the
18 academy.

19 Q. Okay. So they're hired and then they go to the academy
16:04 20 and that's about four months?

21 A. Correct.

22 Q. Okay. And are they allowed to go on the street and arrest
23 people and do sort of law enforcement tasks while they're at
24 the academy?

16:05 25 A. No.

16:05 1 Q. Okay. But they get that D.O.T. training at the academy?

2 A. They may.

3 Q. They may.

4 A. Correct.

16:05 5 Q. Okay. If they don't get it at the academy, when do they
6 get it?

7 A. They get that when they come to the police department and
8 have their active field training.

9 Q. Okay. And that active field training is within the first
16:05 10 year of them being with the Wauwatosa Police Department,
11 correct?

12 A. Correct.

13 Q. Okay. Thank you. And as part of that training, you're
14 taught about the Driver's Privacy Protection Act; is that
16:05 15 accurate?

16 A. Correct.

17 Q. Could you please describe to us what that training,
18 specific to the DPPA, what that consists of in order to pass
19 it?

16:05 20 A. I don't know what the specific training is for that
21 specific policy.

22 Q. Okay. But you said you've been an officer for 27 years?

23 A. Twenty-two.

24 Q. Sorry, 22 years. And you said that that training happens
16:06 25 how often?

16:06 1 A. It depends if it's a departmental training or if it's a
2 state recertification.

3 Q. Okay. So let's say if it's a department training, how
4 often does Wauwatosa Police Department have its officers
16:06 5 participate in the DPPA training?

6 A. So I don't know if we have a specific policy that's
7 entitled DPPA. There's a combination of open records requests
8 along with the DPPA that deals with both of those topics. And
9 just like all our or policy and procedure, they're reviewed
16:06 10 every couple years for any updates and then rolled back out or
11 down to the staff for, could be roll call trainings, could be
12 group trainings once those policies come out. So about every
13 couple years there is informal training.

14 Q. Okay. So what I'm talking about, I'm talking about
16:07 15 training, not policies, because the DPPA training is conducted
16 by the DOJ, correct?

17 A. I don't know.

18 Q. Okay. But you have access to the time system?

19 A. I do.

16:07 20 Q. Okay. And in order to have access to the time system, can
21 you just go on any computer and have access?

22 A. I don't believe so.

23 Q. Okay. So what does it require for you to access someone's
24 D.O.T. records? What do you have to do?

16:07 25 A. You're able to access those through squad computers once

16:07 1 logged on, once your credentials are verified, meaning that the
2 system identifies you as a valid user.

3 Q. Okay. So I'm sorry, I'm really trying to understand this.
4 So I'm going to make a presumption. So when someone is pulled
16:07 5 over and an officer goes back and conducts the checks in their
6 squads, are they -- is that when they're going into the D.O.T.
7 system to look people up?

8 A. Correct.

9 Q. Okay. And that's in -- And they can do that from their
16:08 10 squad vehicle?

11 A. They can.

12 Q. Okay. And then in order to look people up, for instance,
13 at the Wauwatosa Police Department, is it just like an open
14 source computer that anyone can look someone up, or do you have
16:08 15 to put a specific user name and password? How does that work?

16 A. Every computer you must log into with your own specific
17 user name.

18 Q. Okay.

19 A. There are not just like open computers at the police
16:08 20 department for that type of information.

21 Q. I see. Okay. And so can a Wauwatosa -- you know, can
22 someone at Wauwatosa give their passport -- excuse me -- their
23 user name and password to someone that does not have access to
24 the D.O.T.? Is that okay for them to do if they haven't gone
16:08 25 through the training themselves?

16:08 1 A. So you asked two questions. Can they give it to someone?
2 Sure. Should they give it to someone? No. It's a violation
3 of policy.

4 Q. Okay. Thank you for correcting me. So a person should
16:09 5 not give their user name and password to someone that has not
6 gone through the DPPA training; is that accurate?

7 A. It depends on what they're accessing. We do have generic
8 passwords as well that we access different things through as
9 well.

16:09 10 Q. Okay. But if you're a person that does not have -- has
11 not gone through the training with the DOJ and has not been
12 credentialed to have access to the DPPA, even with those extra
13 user names and passwords, are they allowed to access that
14 system?

16:09 15 A. Could you restate that question exactly?

16 Q. Okay. Let me give you an example. I want your user name
17 and password. I haven't gone through the training. I work at
18 the City of Wauwatosa, haven't gone through the training. Can
19 you give me your user name and password so I can look someone
16:10 20 up?

21 A. I could give it to you, yes.

22 Q. Okay. Should you give me your user name and password if I
23 haven't gone through the training myself?

24 A. Probably not.

16:10 25 Q. Okay. And why is that?

16:10 1 A. Because the access to that information generally is for
2 law enforcement sensitive only, and that's who -- excuse me,
3 that's how we restrict who has access to that by giving those
4 credentials and that ability to.

16:10 5 Q. Okay. Now, as part -- Why does law enforcement need
6 access to this information?

7 A. To which information?

8 Q. To information -- Well, let me just take a step back. So
9 when a law enforcement officer accesses someone's information,
16:10 10 does it just go into the D.O.T. records?

11 MS. BAYNARD: Objection to form of the question. I
12 think it's ambiguous and foundation.

13 MS. MOTLEY: I'll rephrase.

14 THE COURT: Thank you, Miss Motley.

16:11 15 MS. MOTLEY: Thank you.

16 BY MS. MOTLEY:

17 Q. So let's take it a real life example. Okay. Someone's
18 being pulled over, okay, and they have their squad camera -- or
19 squad computer in the car. When they go and do their checks
16:11 20 and they type in the information, does the system specifically
21 go to only the D.O.T. record, or does it go to a bunch of
22 different databases?

23 A. It, I believe, it checks several databases.

24 Q. Okay. Do you know what databases it checks?

16:11 25 A. I believe when you do a single name check, it's possible,

16:11 1 or a plate check or a serial number on some type of piece of
2 property, it'll check Department of Transportation, it'll check
3 time, it'll check a national crime information. Property,
4 databases. There's all sorts of things that it checks at the
16:12 5 same time.

6 Q. Okay. But as the user, you have to -- do you have to
7 check a box to make sure it checks D.O.T. or NCIC, or does it
8 automatically check all those different databases at the same
9 time?

16:12 10 A. I don't know if it checks all of them at once.

11 Q. Okay. Do you know what databases it does check
12 automatically?

13 A. I do not.

14 Q. Okay. Thank you. But you said you can do those searches
16:12 15 with the -- a name check, you mentioned.

16 A. You can. Yes.

17 Q. Okay. Thank you. Now, per the Wauwatosa Police
18 Department policy, what are some of the information that's
19 supposed to be protected by the police department?

16:13 20 MS. BAYNARD: Objection. Foundation.

21 BY MS. MOTLEY:

22 Q. Based on your training and experience --

23 MS. BAYNARD: I'll withdraw.

24 THE COURT: Go ahead, Miss Motley. I heard you
16:13 25 starting to rephrase the question.

16:13 1 MS. MOTLEY: Yes.

2 THE COURT: You may proceed.

3 MS. MOTLEY: Thank you.

4 BY MS. MOTLEY:

16:13 5 Q. Based on your training and experience, what are some of
6 the personal information that Wauwatosa police officers are
7 supposed to protect?

8 A. We are supposed to protect all personal information.

9 Q. Okay. If a person is arrested, does that make it okay for
16:13 10 their address to be, you know, shared, disclosed to people
11 outside the Wauwatosa Police Department?

12 MS. BAYNARD: Objection to form of the question.
13 Compound.

14 MS. MOTLEY: I'll --

16:13 15 THE COURT: Sustained. You may rephrase and simplify
16 it, Miss Motley. Thank you.

17 MS. MOTLEY: Thank you.

18 BY MS. MOTLEY:

19 Q. Based on your training and experience, if someone is
16:14 20 arrested for a noncriminal ticket, is it the policy of the
21 Wauwatosa Police Department that their address can be disclosed
22 publicly?

23 MS. BAYNARD: Going to object to relevance too. I
24 don't think that this -- I guess I don't think this question
16:14 25 is eliciting a response that would be relevant to any of the

16:14 1 claims at issue, specifically the DPPA claim.

2 MS. MOTLEY: Your Honor, actually this is relevant to
3 the DPPA claim. We have two defendants here, goes to claim
4 two.

16:14 5 THE COURT: Overruled. You may answer the question,
6 Captain Vetter.

7 THE WITNESS: My experience is that addresses often
8 are redacted.

9 BY MS. MOTLEY:

16:14 10 Q. Now, based on your training and experience, is it the
11 policy of Wauwatosa Police Department to disclose a person's
12 driver's license number publicly?

13 A. No.

14 Q. Based on your training and experience, is it the policy of
16:15 15 the Wauwatosa Police Department to disclose a person's height,
16 weight, eye color, hair color publicly?

17 A. No.

18 Q. Based on your training and experience, is it the policy of
19 the Wauwatosa Police Department to disclose a person's home
16:15 20 address publicly?

21 A. No.

22 Q. Thank you. Now, I want to talk a little bit about police
23 citizen complaints. How does one -- Do you have a police
24 citizen complaint policy?

16:15 25 MS. BAYNARD: Going to object on the basis of

1 foundation, relevancy. This -- I can't imagine how the
2 complaint policy would have anything to do with the DPPA claim.

3 THE COURT: Relevance?

4 MS. MOTLEY: Your Honor, it goes to the willful
5 reckless with regards to the target list. We've already had
6 testimony from Miss Sonora Larson that she put in a police
7 citizen complaint and she ended up on the target list.

8 THE COURT: May I please have -- see the attorneys at
9 sidebar?

10 (The following discussion was held at sidebar.)

11 THE COURT: What's the relevance relating to
12 procedure or policy?

13 MS. MOTLEY: No problem. So we believe that there
14 are some people that are added to this target list simply
15 because they put in a police citizen complaint, and, you know,
16 Sonora Larson testified that she was a person that put in a
17 police citizen complaint, so it goes to willful reckless.

18 THE COURT: Okay. I guess are you going to tie it to
19 these defendants?

20 MS. MOTLEY: Yes.

21 THE COURT: The two defendants?

22 MS. MOTLEY: Absolutely.

23 THE COURT: As we had discussed, the willful conduct
24 has to be on the part of the defendants.

25 MS. MOTLEY: Correct.

16:17 1 MS. BAYNARD: I don't think it's been established who
2 she put the complaint in to, and she's not -- I mean --
3 MS. MOTLEY: She testified --
4 MS. BAYNARD: Yeah, but she didn't say I put in the
16:17 5 complaint to Ratkowski and this is what happened, or I put in a
6 complaint to whatever --
7 MS. MOTLEY: Vetter. But he was the number two. So
8 if she put in a complaint to the police department --
9 MS. BAYNARD: You're just assuming that then Vetter
16:17 10 would have the complaint.
11 MS. MOTLEY: Well, I'm not asking about her specific
12 complaint, I'm asking about the complaint policy.
13 THE COURT: I'll allow limited questions on the
14 procedure, but I don't think we need to walk through all of the
16:17 15 procedure of a citizen complaint because it's not relevant
16 here, and I'll allow you to connect it to the two defendants.
17 MS. MOTLEY: Okay. And, Your Honor, I apologize.
18 What I'm trying to do is --
19 MS. BAYNARD: I get it.
16:17 20 MS. MOTLEY: That's what I'm asking him. Those are
21 questions for Weber, so I'm trying to avoid that.
22 MS. BAYNARD: Yeah. I mean --
23 MS. MOTLEY: I don't really have many more questions
24 on that, so --
16:18 25 THE COURT: All right. Thank you.

16:18 1 MS. MOTLEY: Thank you.

2 (The sidebar discussion ended.)

3 THE COURT: Thank you. Miss Motley, you may
4 continue.

16:18 5 MS. MOTLEY: Thank you, Your Honor.

6 BY MS. MOTLEY:

7 Q. Captain Vetter, I guess I want to take a quick step back
8 and I want to focus on June 5th of 2020. So on June 5th of
9 2020, do you recall what your title was with the Wauwatosa
10 Police Department?

16:19 11 A. Captain of patrol bureau.

12 Q. Okay. So you were second in the chain of command amongst
13 two other captains; is that accurate?

14 A. I am equal to two other captains. So I wouldn't say I'm
15 second.

16:19 16 Q. I'm sorry. Okay. But the chief, only the chief is above
17 you?

18 A. Correct.

19 Q. Okay. Thank you. And taking a step back, as part of the
16:19 20 training and -- of officers with the Wauwatosa Police
21 Department, are they required to follow the U.S. Constitution?

22 A. Yes.

23 MS. BAYNARD: Objection to form of the question. I
24 mean, relevance. He already answered.

16:19 25 THE COURT: Overruled. You may continue.

16:19 1 MS. MOTLEY: Thank you.

2 BY MS. MOTLEY:

3 Q. Now, we talked a little bit about police citizen
4 complaints, and I understand that's not your area completely,
16:19 5 but do you recall receiving any police citizen complaints in
6 2020?

7 A. Yes.

8 Q. Okay. Do you recall receiving any police citizen
9 complaints in 2021?

16:20 10 A. Yes.

11 Q. Okay. Do you recall receiving a police citizen complaint
12 from me regarding plaintiff John Larry?

13 A. Vaguely.

14 Q. Okay.

16:20 15 MS. MOTLEY: Your Honor, may I approach?

16 THE COURT: You may.

17 MS. MOTLEY: I'd like to present to him Exhibit 217.

18 THE COURT: You may. And is there an objection to
19 this exhibit?

16:20 20 MR. WIRTH: We're going to -- What is 217? May I
21 see it? Thank you.

22 MS. BAYNARD: I guess we'll see where the questions
23 go. I have an objection to the relevance of this document to
24 the DPPA claims, but --

16:21 25 THE COURT: You may approach.

16:21 1 BY MS. MOTLEY:

2 Q. I want to present you with Exhibit 217 to refresh your
3 memory.

4 THE COURT: Hasn't been published yet.

16:22 5 BY MS. MOTLEY:

6 Q. Now, are you familiar with Exhibit 217?

7 A. Yes.

8 Q. How are you familiar with this document?

9 A. This was a complaint or list of demands sent by your
16:23 10 office or yourself about a citation that David Bowen (phonetic)
11 and John Larry received back in 2020.

12 MS. MOTLEY: Your Honor, I move to admit Exhibit 217.

13 THE COURT: Any objection?

14 MS. BAYNARD: Yes, Your Honor. One, I'm not --
16:23 15 object to the relevance of this document. It definitely does
16 not go to either of the remaining claims, just by the date
17 alone I can tell that, and then there is also information that
18 relates to someone who is not a party to this action at all.

19 MS. MOTLEY: Your Honor, it goes to willful reckless
16:24 20 damages, and the document that we are referring to, at least
21 one of the documents referring to specifically plaintiff John
22 Larry, so it goes to his specific claim and his specific
23 damages.

24 MS. BAYNARD: Your Honor, I disagree and if we want
16:24 25 to have a sidebar and take a look at the exhibit together, we

16:24 1 can.

2 THE COURT: It is helpful if I have the exhibit that
3 you all are arguing about.

4 MS. MOTLEY: I thought -- Sorry.

16:25 5 (The following discussion was held at sidebar.)

6 THE COURT: Do you have the document?

7 MS. MOTLEY: Yes. Okay.

8 THE COURT: I think you can --

9 MS. MOTLEY: Your Honor, this -- Sorry. I think
16:25 10 this particular exhibit is regarding John Larry, who's the
11 plaintiff. I sent, but have 2021 -- So the document is
12 disclosed by this defendant, and basically this document goes
13 to what are the documents that Joseph Roy disclosed and
14 released on January 7th, 2021, and so this specifically goes to
16:25 15 him only going to get into John Larry, and it goes to his --
16 the willful conduct of Joseph Roy as it relates to John Larry
17 in the document that was released publicly.

18 MS. BAYNARD: Well, Your Honor --

19 MS. MOTLEY: And here's a letter and Luke Vetter, he
16:26 20 wrote a letter back to me on February 15th of 2021, which he
21 just admitted to in the --

22 MR. SCHWAB: These relate to specific documents,
23 another document part of that release which includes Mr. Larry
24 and 10 other plaintiffs' personal identifying information and
16:26 25 their explanation for how that information and the providence

16:26 1 of that information at from --

2 MR. WIRTH: One, Judge --

3 THE COURT: All right. So let me understand, you
4 want to do what on the witness stand with this document? You
16:26 5 want to -- Is it to talk to him about his letter?

6 MS. MOTLEY: That's correct. And --

7 THE COURT: Only specifically about --

8 MS. MOTLEY: -- John Larry.

9 THE COURT: -- Mr. Larry?

16:26 10 MS. MOTLEY: Correct.

11 MS. BAYNARD: But, Your Honor, one, I have an issue
12 with if we're talking about the -- this only guess to Roy's
13 disclosure, that was on January 1st, 2021. Vetter's response
14 to whatever, I guess, whatever complaint was filed or sent or
16:27 15 letter sent has nothing to do with the specific -- with the
16 specific claims against Captain Vetter or Lieutenant Vetter.
17 Also this has --

18 THE COURT: There's no claim against Vetter.

19 MS. BAYNARD: Yes. Sorry, sorry. Against Roy. This
16:27 20 letter has nothing to do with the claims against Roy. It's a
21 letter that attorney Motley and also David Bowen is not a
22 plaintiff.

23 MS. MOTLEY: You done? Sorry. And just --

24 MS. BAYNARD: I guess my objection would be is on the
16:27 25 basis of relevance. I don't think that this document has any

16:27 1 bearing on the facts of consequence certainly to my
2 understanding that is only going to be used for Roy.

3 THE COURT: So this --

4 MS. MOTLEY: Your Honor --

16:27 5 THE COURT: Excuse me, please. Mr. -- Captain
6 Vetter's response is, I mean, is all about Bowen. Is there
7 another page that --

8 MS. MOTLEY: Yeah, there is another page after that
9 goes to John Larry.

16:28 10 THE COURT: All right.

11 MR. SCHWAB: Excuse me, please.

12 THE COURT: Excuse me, please. You may ask only
13 regarding Mr. Larry and only his response that he commit --
14 Your letter has other information?

16:28 15 MS. MOTLEY: No, it doesn't. This is specifically to
16 John Larry. I didn't name one other person in this letter but
17 John Larry.

18 MS. BAYNARD: I mean, I guess additionally what I'm
19 anticipating that what it's going to be used for is these --
16:28 20 the whole -- this is a nonrelated issue of there being false
21 arrests. There was another complaint attorney Motley filed,
22 sent, saying there's these false arrest records. There's an
23 arrest person that he wasn't arrested. Is that where you're
24 going with this line of questioning?

16:28 25 MS. MOTLEY: Well, the point is these documents that

16:28 1 were released were released by Roy on January 7th, 2021. This
2 specific document, specific to John Larry, was released
3 publicly to 16 people, and so, you know, that goes to willful
4 reckless, and he -- and this goes to his exact claims to the
16:29 5 claim involving Joseph Roy.

6 MS. BAYNARD: But this isn't the document that was
7 released. His intimate report I agree was released, and if you
8 were saying -- if you were asking about that but this is a
9 letter you sent afterwards talking about the issue of these --
16:29 10 the supplemental report seen him as arrested, and just because
11 in our communications I'm assuming that you're going to talk
12 about the false arrests, and it's going to go to, I guess,
13 damages of that sort.

14 THE COURT: Okay. So, Miss Motley, so this incident
16:29 15 report concerns what?

16 MS. MOTLEY: This incident report specifically --

17 THE COURT: Was disclosed by Mr. Roy; is that
18 correct?

19 MS. MOTLEY: That's correct.

16:29 20 THE COURT: So you may ask only regarding the
21 incident report disclosed by Mr. Roy and only as it relates to
22 plaintiff Larry. You may not get into false arrest
23 allegations, which was dismissed as part of other claims in
24 this lawsuit. So the incident report, if you want to talk
16:30 25 about that, that was disclosed by Roy.

16:30 1 MS. MOTLEY: Thank you.

2 MR. SCHWAB: The term "false arrest" here is --

3 MS. BAYNARD: Yeah, I don't mean --

4 MR. SCHWAB: -- with the Fourth Amendment thing. In

16:30 5 fact, there were records that says -- that we understand to be

6 procedure as to tickets, but they were disclosed as this person

7 was arrested and whether they, in fact, weren't, and that's

8 what this is going to. To arrest is not a --

9 THE COURT: I was thinking about the false -- the

16:30 10 false -- the claim, Mr. Schwab, so -- correct, I was thinking

11 about that. If it relates specifically to the incident report

12 that was disclosed --

13 MR. SCHWAB: Yes.

14 THE COURT: -- by there -- allegedly by Mr. Roy, and

16:30 15 only as to Mr. Larry, and I think we can do this in an

16 efficient way.

17 MS. MOTLEY: All right. Thank you.

18 THE COURT: All right. Thank you. So we have to

19 complete the record for the court reporter, sorry, so --

16:31 20 MS. BAYNARD: We'll have a redacted version.

21 THE COURT: So the objection is overruled, so will

22 focus, Miss Nealson (phonetic), if you could stay here to hear

23 this. I'm sorry, Miss Motley. To finish the record, the

24 objection is overruled in part and granted in part. You will

16:31 25 be allowed to go as to the incident report as to Mr. Larry and

16:31 1 what will be published only the page that concerns Mr. Larry,
2 the incident report.

3 MS. MOTLEY: Thank you.

4 THE COURT: Thank you.

16:31 5 (The sidebar discussion ended.)

6 MS. MOTLEY: Your Honor, I just want to clarify for
7 the record that Exhibit 217 has been published?

8 THE COURT: The Exhibit 217 has been admitted into
9 evidence and may be published as discussed.

16:32 10 MS. MOTLEY: Thank you.

11 (Exhibit No. 217 was received into evidence.)

12 MS. MOTLEY: Sorry, I was just setting up my --

13 MS. BAYNARD: Your Honor, I just want to get clear
14 what gets published, because the entirety of the exhibit as we
16:32 15 discussed does not relate to the claims.

16 THE COURT: No. I thought I was already clear as to
17 what can be published.

18 MS. MOTLEY: Yes, Your Honor.

19 THE COURT: And if I'm counting pages, it's just, I'm
16:32 20 looking at a letter dated February 15, 2021, from Mr. Vetter,
21 R-E, a Mr. John Larry.

22 MS. MOTLEY: Thank you, Your Honor. I'm just getting
23 my computer ready. I don't want to show the wrong thing.

24 MS. BAYNARD: Wait, Your Honor, it's my understanding
16:33 25 only the last page of that --

16:33 1 THE COURT: That's correct. Page -- The letter from
2 Mr. Vetter to -- regarding this incident will be published.
3 MS. BAYNARD: So I would ask that --
4 THE COURT: If you want to ask foundation questions,
16:33 5 but --
6 MS. MOTLEY: Okay. Your Honor, I'm sorry. Can we
7 have another sidebar?
8 THE COURT: Okay.
9 (The following discussion was held at sidebar.)
16:34 10 MS. MOTLEY: Sorry. So my letter regarding John
11 Larry is that okay? I put --
12 MR. SCHWAB: Letter and his response specifically --
13 THE COURT: Plaintiffs' response, and --
14 MS. BAYNARD: I have a problem with this.
16:34 15 MS. MOTLEY: It's just John Larry. There's nothing
16 else in here.
17 MS. BAYNARD: I know, but what I have an issue with
18 is this -- what I have an issue is the suggestion in this
19 letter that people are being, again, not a false Fourth
16:34 20 Amendment, but the notation on the reports used to indicate on
21 incident reports arrested person.
22 MS. MOTLEY: We're just talking about this report.
23 This report specific to John Larry is a report that John Joseph
24 Roy released. That's a fact. He released this as part on
16:34 25 January --

16:34 1 MS. BAYNARD: This is a month after.

2 MS. MOTLEY: What does it matter? What does the date

3 matter?

4 MS. BAYNARD: I'm saying we're talking about the

16:35 5 releasing records on January, 2021, so attorney Motley's letter

6 a month later, I don't understand the relevance. I have an

7 issue with the last page, but the Court said that it relates

8 specifically to John Larry so that she can ask about it.

9 MS. MOTLEY: This case is about data that was

16:35 10 released.

11 THE COURT: Okay. Yes, so this case is about data

12 that was released, and it's also about the knowledge of the two

13 defendants and their state of mind at the time they did

14 whatever they did, claim to use. So your letter is

16:35 15 February 10, so how does it go to reckless disregard on

16 whatever date that they disclosed?

17 MS. BAYNARD: January 1. Or January 7 --

18 THE COURT: So I had arrived -- I had allowed his

19 letter to come in, since he -- he's the one who wrote it in

16:35 20 response even though it came forward, but your letter

21 afterwards and his letter specific as to the incident report,

22 so if you want to ask foundation questions and get to his

23 letter that he wrote, go ahead and do that, but you don't need

24 to publish to the jury your letter that comes after the fact.

16:36 25 It doesn't show their state of mind.

16:36 1 MS. MOTLEY: Well, it does, it goes to Roy's
2 knowledge of the documents that he was releasing publicly
3 because part of the document --

4 THE COURT: Does your letter show his knowledge?

16:36 5 MS. MOTLEY: Well, it goes to willful reckless. It
6 shows constructive knowledge. His -- His argument is because
7 I didn't write the document, therefore I cannot be, you know,
8 held like for the --

9 THE COURT: How does your letter show his state of
16:36 10 mind at the time of the disclosure? Your letter's putting him
11 on notice after the fact and calling him out after the fact.

12 MS. MOTLEY: But how is --

13 MS. BAYNARD: You should read the letter too.

14 MS. MOTLEY: The document was released January 7th,
16:36 15 2021. So because I didn't read 500 pages on January 7, 2021,
16 I've got the document --

17 THE COURT: I'm not faulting you about reading or not
18 reading, I'm just going back to the elements of the claim,
19 Miss Motley, which requires you to show their state of mind at
16:37 20 the time of the action that they took.

21 MS. MOTLEY: That's right.

22 THE COURT: Okay. So you made --

23 MS. BAYNARD: But this is -- relates to we've also
24 identified dozens of other false arrests and booking
16:37 25 information made by many Wauwatosa police officers released to

16:37 1 the public. It's interesting that many of the citizens, I
2 mean --

3 MS. MOTLEY: You said it goes to people. It's
4 like --

16:37 5 THE COURT: I'm sorry, we're going to move along. I
6 have a jury waiting. You may not publish your letter on -- may
7 publish Mr. Vetter's letter since he wrote it and specifically
8 as to the incident specifically as to plaintiff Larry.

9 MS. MOTLEY: Okay. No problem. Thank you.

16:38 10 (The sidebar discussion ended.)

11 MS. MOTLEY: Your Honor, may I proceed?

12 THE COURT: Yes, you may. Thank you.

13 MS. MOTLEY: Thank you.

14 BY MS. MOTLEY:

16:38 15 Q. Now, Captain Vetter, do you recall receiving on
16 Exhibit 217, I believe it's the last page, do you recall
17 actually writing a letter on February 15th of 2021 to me?

18 A. Yes.

19 Q. And do you recall why you wrote this letter?

16:38 20 A. This was in response to your claims for violation or a
21 complaint.

22 Q. And do you recall what that complaint was, with regards to
23 John Larry specifically?

24 A. I think the main concern was that his name when we issued
16:38 25 a citation showed up in -- in the back side of an incident

16:38 1 report with the classification -- with the administrative
2 classification of arrested.

3 Q. Okay. And based on your letter to me on February 15th of
4 2021, let's see, so let's go to paragraph number two.

16:39 5 Actually -- Sorry. I'm trying to make this big for the jury.

6 So in this letter, I'll go paragraph by paragraph. First
7 paragraph, you acknowledge receipt of my certified letter with
8 regards to John Larry, correct?

9 A. Yes.

16:39 10 MS. BAYNARD: Objection, Your Honor. I'm going to
11 object to hearsay. This is asking the question about a
12 document that has not been admitted into evidence, and if we're
13 going to use the page that was admitted to talk about the pages
14 that were not admitted, I want to make sure the record is clear
16:39 15 on that.

16 MS. MOTLEY: Your Honor, if I may respond. I'm
17 asking Captain Vetter about this specific letter which was just
18 admitted to the Court.

19 THE COURT: Okay. The objection is overruled. The
16:39 20 question is setting up the reason for this Mr. -- Captain
21 Vetter's letter. So you may continue as to his letter.

22 MS. MOTLEY: Thank you.

23 BY MS. MOTLEY:

24 Q. And, Captain Vetter, on paragraph one your letter was in
16:40 25 response to a police incident involving plaintiff John Larry

16:40 1 that occurred on August 14th of 2020; is that correct?

2 A. Correct.

3 Q. Okay. And in your letter you noted what happened to John
4 Larry August 14th of 2020, correct?

16:40 5 A. Correct.

6 Q. Okay. Could you please explain to the jury, you know, why
7 you wrote this letter?

8 A. So people file complaints with the police department all
9 the time. It's pretty routine for police work. We do a lot of
16:40 10 work that upsets people and they don't like some of the work we
11 do, especially when they are arrested, so they file complaints.
12 It's pretty normal.

13 So in this circumstance there was an allegation that we
14 were spreading information of a false arrest and that a -- an
16:41 15 apology was demanded by the police department -- from the
16 police department because of that.

17 Q. Okay. Captain Vetter, was John Larry arrested on
18 August 14th of 2020?

19 A. He was cited on August 14th of 2020.

16:41 20 Q. Okay. Was John Larry arrested on August 14th of 2020?

21 A. I believe I just answered that. He was cited on
22 August 14th of 2020.

23 Q. You told me what -- My question specific is, was John
24 Larry arrested on August 14th of 2020 --

16:41 25 MS. BAYNARD: Objection.

16:41 1 BY MS. MOTLEY:

2 Q. -- not was he cited?

3 MS. BAYNARD: Object to the form of the question.
4 Argumentative.

16:41 5 BY MS. MOTLEY:

6 Q. Arrested on August 14th of 2020?

7 THE COURT: When there's an objection on the floor,
8 please pause. Okay.

9 MS. BAYNARD: Objection to the form of the question,
16:42 10 argumentative and relies on an undefined term, arrest.

11 THE COURT: All right. The objection is sustained,
12 and just maybe rephrase. There was a question asked about
13 citation, that is a question, asked about arrest. Miss Motley,
14 if you could clarify the question about arrest and we could
16:42 15 move on.

16 MS. MOTLEY: Okay.

17 BY MS. MOTLEY:

18 Q. Captain Vetter, based on your knowledge, was John Larry
19 arrested by a Wauwatosa police officer on August 14th of 2020?

16:42 20 A. It really depends what the definition of the word
21 "arrested" is.

22 Q. Okay. Well, you're an officer of 22 years, correct?

23 A. Yes.

24 Q. So you don't know what the definition of arrest is?

16:42 25 MS. BAYNARD: Object to the form of the question.

16:42 1 THE COURT: Overruled. You may answer.

2 THE WITNESS: Could you ask the question again?

3 BY MS. MOTLEY:

4 Q. You're an officer of 22 years. You don't know the
16:42 5 definition of arrest?

6 A. I do.

7 Q. Okay. So what is the definition of arrest?

8 A. It varies. I can arrest someone without putting handcuffs
9 on them and issue them a citation. That technically is an
16:43 10 arrest.

11 Q. Okay.

12 A. I can also put handcuffs on them, I could use force to
13 arrest them. It's not a single answer, ma'am.

14 Q. Okay. So in August 14th of 2020, based on your definition
16:43 15 of arrest, was John Larry arrested?

16 A. He was not booked or processed or handcuffed.

17 Q. Can you arrest someone virtually?

18 A. No.

19 THE COURT: Exhibit 217, Miss Motley, if you're done
16:43 20 with your questions, may be taken down.

21 MS. MOTLEY: Oh. Sorry. I do have --

22 BY MS. MOTLEY:

23 Q. With regards to -- to this exhibit, you noted on paragraph
24 three that there was an arrest entry for John Larry; is that
16:44 25 accurate?

16:44 1 A. Correct.

2 Q. Thank you. I want to -- Do you recall -- Sorry. Do you

3 recall what incident 2-0152959 was referencing with regard to

4 John Larry as you put in that letter?

16:44 5 A. I do not.

6 Q. Okay. Would it refresh your memory if I present the

7 document to you?

8 A. Yes.

9 MS. MOTLEY: Your Honor, may I approach?

16:44 10 THE COURT: You may. What exhibit is that?

11 MS. MOTLEY: Oh, I'm sorry.

12 (There was discussion off the record.)

13 BY MS. MOTLEY:

14 Q. You've had a chance to review Exhibit 215?

16:45 15 A. No, there's 20 pages here. If it is a specific question

16 at a specific time in here, I'll focus on that to be efficient.

17 Q. I'm sorry?

18 A. Respectful of the jury's time.

19 Q. No problem. So with regards to this specific document, we

16:45 20 are focused on John Larry, okay?

21 A. Okay.

22 Q. So could you please review this document, only focusing on

23 John Larry?

24 MS. BAYNARD: What page --

16:45 25 (There was discussion off the record.)

16:47 1 THE WITNESS: It looks like I'll focus on pages four
2 and then pages 16 and 17.

3 BY MS. MOTLEY:

4 Q. Okay. So with regards to pages -- focus on pages 16 and
16:47 5 17 and John Larry.

6 Now, this document notes that John Larry was arrested on
7 August 14th of 2020, correct?

8 A. So there's a name, classification that must be attached to
9 every single person in a police report, and the only
16:48 10 classification that's available for this circumstance, when
11 someone is cited, is arrested.

12 Q. Okay. So what else do you see in this document as it
13 relates to John Larry?

14 A. I see his name, his age, his address, physical
16:48 15 descriptors, and charge -- the ordinance violation for this
16 incident.

17 Q. Are you aware that this specific incident report was part
18 of the documents that Joseph Roy released publicly to 16 people
19 on January 7th of 2021?

16:48 20 A. I am not aware of that.

21 Q. Okay.

22 MS. MOTLEY: Your Honor, I ask that I be allowed to
23 admit Exhibit 215.

24 THE COURT: Any objection to 215?

16:49 25 MS. BAYNARD: I guess my only objection would be that

16:49 1 I believe the one we're looking at is 335 pages. I'm not sure
2 and it's unredacted. So that's my only concern.

3 THE COURT: So as to Exhibit 215, page 16, the last
4 entry with reference to plaintiff John Larry's admitted into
16:49 5 evidence.

6 MS. MOTLEY: Thank you.

7 (Exhibit No. 215, page 16, was received into
8 evidence.)

9 THE COURT: And it may not be published unless
16:49 10 redacted for other individuals who appear on this list. But as
11 to Mr. Larry, it may.

12 MS. MOTLEY: Thank you, Your Honor. I'd like to
13 share my screen if that's okay. I can show just his entry.

14 THE COURT: Yes.

16:50 15 BY MS. MOTLEY:

16 Q. Okay. So we're just -- Captain Vetter, we're just going
17 to look at arrested 10, where it says John Larry. Do you see
18 that?

19 A. Yes.

16:50 20 Q. Okay. And on this -- this document, is 20 pages, correct?

21 A. Yes.

22 Q. Thank you. And on this document you see John Larry's, you
23 know, address, correct?

24 A. Yes.

16:50 25 Q. His date of birth?

16:50 1 A. Yes.

2 Q. His height, his weight, hair color, eye color?

3 A. Yes.

4 Q. Okay. And it notes that he's arrested, but that's not

16:50 5 accurate, correct?

6 A. At the time it was accurate, yes.

7 Q. Okay. You just mentioned that he wasn't handcuffed on

8 August 14th of 2020, right?

9 A. I don't believe he was.

16:50 10 Q. Okay. You just mentioned you can't arrest somebody

11 virtually, correct?

12 A. Correct.

13 Q. Okay. And was John Larry physically taken into custody on

14 August 14th of 2020?

16:51 15 MS. BAYNARD: Asked and answered.

16 THE COURT: Captain Vetter did previously answer this

17 question, but in the interest of moving on, you may answer it.

18 THE WITNESS: Could you repeat it?

19 BY MS. MOTLEY:

16:51 20 Q. Was John Larry actually arrested -- Your answer has

21 changed now?

22 MS. BAYNARD: Objection. Argumentative.

23 THE COURT: Just please ask the questions,

24 Miss Motley.

25

16:51 1 BY MS. MOTLEY:

2 Q. Explain how John Larry was arrested on August 14th of
3 2020.

4 A. He was cited, so underneath this category of arrest, that
16:51 5 is a category that you cannot see because it's just an internal
6 record that shows cited or summoned versus a physical custodial
7 arrest.

8 Q. So --

9 A. So underneath arrested there's a category of cited, so
16:51 10 that's what we've been going back and forth about. It doesn't
11 show it on the screen -- or, excuse me, on the report because
12 there's only one category that at that time police could select
13 for someone, like victim or offender or -- or witness or
14 vehicle owner. The only thing available to the officers at
16:52 15 that time was the term "arrested", and then underneath that
16 which does not show up is the subcategory of cited so that's
17 what we keep going back and forth about. I tell you he was
18 cited and then it pops up as arrested.

19 Q. Okay. So let's -- I'm going to scroll down one more so
16:52 20 we see that, and this is still with John Larry, that he was --
21 So you're saying that he was given a ticket on August 14th of
22 2020?

23 A. I don't know if he was given the tickets on that date. He
24 may have -- Tickets may have been written or generated on that
16:52 25 date.

16:52 1 Q. Okay. So it was a noncriminal ticket that may have been
2 perhaps generated on August 14th of 2020?

3 A. Correct. I see an ordinance violation there.

4 Q. Okay. It's an ordinance violation. So if someone gets a
16:53 5 parking ticket in Wauwatosa, that's considered an arrest also?

6 A. No.

7 Q. Okay. So would a Wauwatosa officer looking at this
8 document, would they know that this was not an actual arrest of
9 John Larry put in handcuffs and taken to the Wauwatosa Police
16:53 10 Department? Would they know that looking at this document?

11 MS. BAYNARD: Objection.

12 THE WITNESS: No.

13 MS. BAYNARD: Relevance.

14 THE WITNESS: They would not know.

16:53 15 THE COURT: Captain Vetter, when you hear an
16 objection, please do not answer until I've had the opportunity
17 to rule.

18 All right. The objection is overruled. Captain Vetter
19 may answer.

16:53 20 THE WITNESS: So, no, someone looking just at this
21 paper wouldn't be able to tell that.

22 BY MS. MOTLEY:

23 Q. Okay.

24 A. Again, this is an administrative system that doesn't show
16:53 25 every action in a -- in a case on a defendant.

16:54 1 Q. So even a Wauwatosa officer looking at this would not know
2 that this arrest of John Larry going to handcuffs actually did
3 not happen?

4 A. No.

16:54 5 Q. Okay.

6 MS. MOTLEY: Thank you. I have nothing further.

7 THE COURT: Thank you, Miss Motley.

8 MR. WIRTH: Judge, we had discussed going ahead with
9 the direct examination of each witness so that we didn't have
16:54 10 to keep calling them back. Obviously we wouldn't get that done
11 by 5:00.

12 THE COURT: All right. Ladies and gentlemen of the
13 jury, it's five minutes before 5:00, and you all have been so
14 excellent today, so I don't want to keep you overtime on the
16:54 15 first day. You've put in the hours today. So we are going to
16 stop tonight, even though it's five minute before because we
17 can't accomplish the work in the remaining five minutes.
18 Please report back at 8:30 tomorrow.

19 Before you leave, take a second, write your juror number
16:55 20 on the outside of the cover of your notebook, because that will
21 be your notebook for the duration of the trial; and you will
22 leave the notebook on your seat when you leave here, it will be
23 safe, we'll keep it in custody for you, and you'll have it back
24 again tomorrow.

16:55 25 Again, do not discuss the case with anyone. I'm sure your

16:55 1 family will be very excited to hear what you did today, you
2 could blame it on me that I said don't talk about it quite yet
3 until all the evidence is in and the case has been turned over
4 to you. And not talking about the case includes not talking to
16:55 5 members of the media about the case, and the Court will not
6 release your names to the media, so you do not talk to anyone,
7 and again do not post and do not do any research on the case.
8 Again, on behalf of both parties we thank you so much for
9 your full attention. Please have a restful evening.

16:55 10 THE BAILIFF: All rise for the jury.
11 (The jury was excused.)
12 THE BAILIFF: You may be seated.
13 THE COURT: Captain Vetter, you may step down. We'll
14 have you return tomorrow morning, and, Captain Vetter --

16:56 15 MS. BAYNARD: She's talking to you, Captain.
16 THE COURT: Captain Vetter, also you are not to
17 discuss your testimony with anyone because your testimony will
18 continue tomorrow.

19 THE WITNESS: Yes, ma'am.

16:56 20 THE COURT: Thank you. Please have a good evening.
21 MS. BAYNARD: Thank you.
22 THE COURT: All right. Is there any business for us
23 this evening? First from you, Miss Motley?
24 MS. MOTLEY: No, Your Honor.

16:57 25 THE COURT: Okay. Mr. Wirth?

16:57 1 MR. WIRTH: From the defense perspective, Judge, if
2 we can get an idea of who the witnesses tomorrow will be, to
3 the extent that our cooperative efforts is necessary to have
4 them here, we'll do that.

16:57 5 THE COURT: All right. And also --

6 MR. WIRTH: We're going to keep working on Barry
7 Weber. Just in case.

8 THE COURT: Thank you. And I also need that, as I
9 mentioned, throughout the trial I'll be checking in with you
16:57 10 what the game plan is as we move along.

11 So, Miss Motley, who can I expect to see tomorrow morning
12 after we are done with Captain Vetter?

13 MS. MOTLEY: Your Honor, you can expect defendant
14 Dominick Ratkowski, Katie Schuh, Matthew Stippich. Do you want
16:57 15 the whole --

16 THE COURT: Yeah, we have -- tomorrow is our first
17 full day.

18 MS. MOTLEY: I apologize. Heather Kuhl. I have to
19 check on -- But John Larry. Sorry. Mary Kachelski, Lavita
16:58 20 Booker, and I think that's -- I think that's --

21 THE COURT: Okay. All right. Anything further,
22 Miss Baynard?

23 MS. BAYNARD: Yes, Your Honor. Before we, I guess,
24 have specific witnesses who attorney Motley has just indicated
16:58 25 would be testifying tomorrow, we've already included this in

16:58 1 our original kind of objection to the witness list, but Heather
2 Kuhl, Matt -- and Matt Stippich have no information relevant to
3 the DPPA claims, they are alderpersons -- or former
4 alderpersons, they were both deposed in this case, and neither
16:59 5 of the depositions related to the DPPA claim. So I'm not sure
6 what testimony they would have relevant to any of the claims
7 here.

8 THE COURT: Okay. Miss Motley, as to Matthew
9 Stippich, may I have a proffer of proof of what he will testify
16:59 10 about in regards to the DPPA as to the two defendants here?

11 MR. SCHWAB: Your Honor, these two individuals, first
12 of all, were at protests and they're not on this list. But
13 there is additional evidence that Mr. Ratkowski developed
14 another list and this one instead was of ad hoc committee's
16:59 15 operation inclusion, several -- plaintiff was on that list.
16 But Mr. Stippich and Miss Kuhl were the leaders of that
17 organization, and Mr. Ratkowski looked into their D.O.T.
18 records, looked into their church records, looked into their
19 jobs. This is a pattern and practice, it goes to what his
17:00 20 purpose is, and, in fact, he has an E-mail that says in case
21 anyone's wondering, here's the proof that these people are
22 associated with TPR.

23 THE COURT: All right. So your answer as to Matthew
24 Stippich is that he will testify regarding another list?

17:00 25 MR. SCHWAB: He will testify as to his experience on

17:00 1 this ad hoc committee, which was another subject of targeting.

2 THE COURT: All right.

3 MR. SCHWAB: That is relevant to show the actual
4 purpose. But John Larry was also on that list, on that
17:00 5 committee. Heather Kuhl was on that committee.

6 THE COURT: All right. Well, as to any other lists,
7 again, this is the DPPA violation, and the list I've been
8 hearing about is this list that we spent a lot of time
9 discussing already. So I'm hearing about another list. Go
17:01 10 ahead, Mr. Schwab.

11 MR. SCHWAB: Sure. We're not making additional
12 claims on the basis of this list, but this list is in support
13 of the idea that there were alternative purposes, that there
14 was a targeting of these people on the basis of their political
17:01 15 activity, and I will tell you these E-mails are very direct;
16 are very direct. They include people who could not be
17 considered to be violent like Lindsay Draper (phonetic), who
18 was -- whose D.O.T. records were also looked up based on his
19 perceived association with TPR. This is -- This goes directly
17:01 20 to what his purpose was.

21 MS. BAYNARD: Your Honor, I mean, I'm hearing -- I
22 don't even know who Lindsay Draper is, that would be the first
23 time hearing that name. There is absolutely no relevant
24 information that Matt Stippich, Heather Kuhl, or any
17:01 25 alderperson who's not on this list has, and the only purpose is

17:02 1 going to be to be unnecessarily duplicative, irrelevant, and
2 prejudice the defendant.

3 If they have these E-mails that show something that's
4 relevant to the DPPA claim against Dominick Ratkowski and to
17:02 5 show his state of mind and his reckless alleged behavior, then
6 they can cross-examine him on it and we don't need to bring in
7 alderpersons who are -- have no information relevant to this
8 claim. They're both deposed and neither of them -- neither of
9 them said any of the information I'm hearing now.

17:02 10 THE COURT: All right. Miss Motley, I saw you
11 raising your hand?

12 MS. MOTLEY: Your Honor, I know the insinuation keeps
13 being they were deposed and they didn't bring this up. Well,
14 we didn't find out about this list until we were well into this
17:02 15 lawsuit, so even for Chief Weber, we didn't even know the list
16 existed until well after that deposition. And so that's, I
17 don't think that's a -- I think it's kind of a disingenuous
18 argument.

19 With regards to Matt Stippich and Heather Kuhl, their
17:03 20 testimony goes specific again to John Larry whose information
21 was looked up by Dominick Ratkowski. On the list itself
22 defendant Dominick Ratkowski specifically put John Larry, ad
23 hoc committee. The E-mails that we received were -- where it
24 shows it demonstrates that he looked 'em up, we received from
17:03 25 the defendants, so it goes to willful reckless.

17:03 1 And, you know, they will be quick witnesses. We are happy
2 to, you know, compromise and calling one as opposed to two, but
3 they certainly go to specific claims as it relates to defendant
4 Ratkowski's purpose and especially as it relates to his purpose
17:03 5 with regard to John Larry.

6 THE COURT: Thank you. Just give me a second here.
7 As you all know, and you've addressed this in your opening
8 statements, I'll direct you again to the language of 18 U.S.C.
9 2724, so a person who knowingly obtains, discloses -- and I'm
17:04 10 warning you this is going to be a broken record in this
11 trial -- or uses personal information from a motor vehicle
12 record for a purpose not permitted in this chapter shall be
13 liable to the individual to whom -- so speaking of the
14 individual to whom the information pertains.

17:04 15 So the information that I've been hearing that this
16 trial's about is about this particular list, so witnesses are
17 not going to be allowed to testify about other lists that may
18 have violated the DPPA, so it's not about this list, if it's
19 not about these plaintiffs, if it's not about these defendants,
17:05 20 they will not be allowed.

21 Another lawsuit regarding that list, another lawsuit
22 regarding other plaintiffs, another lawsuit regarding other
23 defendants that these witnesses are relevant to may testify.
24 I've told the jury that this is going to be a five-day trial,
17:05 25 it is, because of the nature of the claim: Personal

17:05 1 information of the named plaintiffs against these two
2 defendants.

3 MS. MOTLEY: Thank you, Your Honor. Again, just to
4 not, you know, beat a dead horse, but again, we just wanted --
17:05 5 specifically this goes specific to John Larry. The information
6 obtained is specific to John Larry. It's information that's on
7 the list, it shows it came from the D.O.T., it shows why he got
8 it from the D.O.T., because he was on this committee. It goes
9 to the claim, and frankly, I believe it goes to willful -- his
17:06 10 willful reckless behavior. It's also on the list that he puts
11 why he was there because he's on this ad hoc committee that is
12 supposed to try to, you know, work with the police to try to
13 invoke positive change, and they didn't like it, frankly.

14 MS. BAYNARD: I mean, that is literally your opinion,
17:06 15 and that has nothing to do with why Heather Kuhl or Matt
16 Stippich should be testifying. If John Larry wants to testify
17 or you want to have Dominick on the stand and say, why did you
18 make the notation ad hoc committee? And you have all these
19 E-mails that you're discussing things, that is fine, but there
17:06 20 is no way that Heather Kuhl or Matt Stippich have any relevant
21 information to why Dominick Ratkowski accessed information or
22 the information that was accessed. There's none.

23 MS. MOTLEY: Your Honor, with that theory, if that's
24 the case then why are we bringing up other protests? Why are
17:07 25 we bringing up this date and this date? You know, it does go

17:07 1 to his state of mind. There's certain people that he was laser
2 focused on targeting, and that goes to his state of mind.

3 And we have a common council member or former common
4 council member who was also protesting in Wauwatosa multiple
17:07 5 times who was not put on this list. Or was on this ad hoc
6 committee with John Larry to whom he then once again accessed
7 his D.O.T. records for a purpose not permitted. And so it goes
8 to willful reckless, it goes to his state of mind.

9 MS. BAYNARD: No.

17:07 10 MS. MOTLEY: If this is a theory, then why are we
11 bringing up any other protests and any other place? That also
12 is completely irrelevant. And that's, you know, frankly I
13 think that's the brush that has been sort of painted that
14 there's protesting in America, that some of it was violent, so
17:07 15 therefore that's a justification for these plaintiffs to be on
16 this list. You know --

17 THE COURT: Explain what is Stippich going to say,
18 and I apologize if I'm mispronouncing his name, and Kuhl are
19 going to say. And you have narrowed it to Mr. Larry and you --
17:08 20 that means that you have narrowed it to defendant Roy regarding
21 the disclosure. What will they say about why Mr. Roy put
22 Mr. -- disclosed Mr. Larry's information on the list?

23 MR. SCHWAB: He can speak -- He can speak to both
24 Mr. Larry's involvement with this committee but he can speak
17:08 25 more broadly to the role of this committee, and I -- this is

17:08 1 deeply relevant, Your Honor. I apologize, but this is -- this
2 goes to the heart of his purpose, and that's -- they're arguing
3 that he had legitimate purpose and for us to be able to offer
4 evidence to rebut that, to say actually here's another
17:08 5 potential purpose, that is at the heart of our case. At the
6 heart of our case. I understand that we are focused on these
7 individuals, and that is correct.

8 THE COURT: And that's -- because that's the lawsuit
9 you brought.

17:09 10 MR. SCHWAB: I understand. But he gets to then say
11 here's my legitimate law enforcement purpose, and if it turns
12 out he had an illegitimate law enforcement purpose or an
13 illegitimate purpose in general, and we have proof that can
14 rebut that he was doing this in some preventive way, and
17:09 15 instead was doing this in a retaliatory manner, then that is
16 directly relevant to his purpose, and when he says I was only
17 doing this for law enforcement purposes but then goes and
18 targets other people because they might have some say in how
19 policing has changed in this town, that is something the jury
17:09 20 needs to know. That is something the jury needs to be able --
21 and plaintiffs deserve to be able to offer because that goes to
22 the heart of what his purpose is.

23 MS. BAYNARD: If they have evidence to show that --

24 MR. SCHWAB: And we have evidence --

17:09 25 THE COURT: Please let Mr. Schwab speak. One person

17:09 1 at a time.

2 MR. SCHWAB: And we have evidence that we received
3 from defendants months ago that has been on our witness list --
4 or, rather, our exhibit list from the start when we -- which we
17:10 5 complied with, got in in time, have never moved, have never
6 changed. In fact, you can go look at the exhibit list. It
7 says ad hoc E-mail. We have not been hiding the ball on this.
8 But this goes to his purpose.

9 THE COURT: I am not seeing this as an issue whether
17:10 10 you did not disclose, and that's not the way I'm asking my
11 question.

12 MR. SCHWAB: Sure.

13 THE COURT: My questions go to relevancy as to the
14 defendant's purposes, their mens rea, so will I expect the
17:10 15 witness to say why or how or when or what Ratkowski or Roy did?

16 MR. SCHWAB: No, but he's going to provide context
17 for what he did. He's going to provide context for what this
18 committee was, how often they met, what their purposes were,
19 the work that they did. That is relevant to some -- to
17:11 20 Mr. Ratkowski targeting them retaliation -- or with
21 retaliation. But setting that context for this committee, so
22 that then when we bring this -- this list of D.O.T. records and
23 acts -- and it looks exactly the same as the -- as the target
24 list, except they're broader and they're just aimed at the four
17:11 25 people who have been appointed to this committee, that gives us

17:11 1 the ability to then explain to the jury this was not a protest
2 group, this was not a group that was involved in -- in -- in
3 violence, this was not a group that could possibly be being
4 investigated.

17:11 5 What is the through line between these two? They were
6 perceived to be, you know, related to TPR and they were
7 perceived to be about police reform, and that provides the
8 context so that we can then understand these E-mails by
9 Mr. Ratkowski in their full -- in their full context and allow
17:11 10 us, the plaintiffs, to put forward an argument to counter his
11 argument that he had a legitimate purpose. So that we can
12 suggest a different purpose.

13 THE COURT: All right. So it appears to me that the
14 conversation regarding Mr. Stippich and Miss Kuhl should be
17:12 15 tabled after Mr. Ratkowski testifies, as you say he will
16 testify in your case in chief.

17 MR. SCHWAB: That is correct and that was our
18 intention.

19 THE COURT: And we will then revisit whether what
17:12 20 you're proffering is relevant to his testimony. Any -- So
21 please have other witnesses ready to go in case those two
22 witnesses do not have anything relevant to offer.

23 MS. MOTLEY: Thank you.

24 MR. WIRTH: Judge, we're -- we're now put in a
17:12 25 position of preparing for a mini trial on why that list was

17:12 1 created and why that list was -- why those four people were,
2 quote, targeted, why -- This is exactly what the Court
3 cautioned against.

4 So obviously I understand the Court's ruling that we'll
17:13 5 revisit this issue after Ratkowski testifies, but he's going to
6 testify that they had a legitimate legal purpose for doing
7 these things. We all know that.

8 THE COURT: But I think I heard, sorry to interrupt
9 you, that the proffer being made that we're not going to talk
17:13 10 about another list. I've heard that there's testimony about
11 this list in question, this disclosure in question. Again,
12 we're not having a second trial within a trial. I am not
13 interested in witnesses coming to talk about other lists
14 because it's not relevant to the list in question, what we will
17:13 15 revisit if they have anything specific to testify to regarding
16 the list that we've all been talking about.

17 MS. MOTLEY: That's correct, Your Honor. And, you
18 know, just to be clear, we are not suggesting that, we're being
19 very specific, this is with regard to plaintiff John Larry, who
17:14 20 is on both claims. He's on the claim for Roy and on for
21 Ratkowski. And so as you saw with Captain Vetter, you know, a
22 large part of his testimony was specific to him and the claim
23 involving defendant Roy.

24 And so with regards to, you know, this ad hoc committee, I
17:14 25 mean, we keep saying list, I know that is the language we've

17:14 1 been used to, but this case is about data and the information
2 that was obtained from the D.O.T. and the list was just a
3 vehicle by which that data was, you know, was -- was disclosed.

4 So I just want to be clear, we understand we're not coming
17:14 5 here with another list tomorrow, we're not talking with someone
6 that isn't a plaintiff, we're talking about our specific
7 plaintiff, John Larry.

8 THE COURT: And in regards to your -- the specific
9 claim, not some other claim too that has to be part of it too.

17:14 10 MS. MOTLEY: That's right.

11 THE COURT: Okay.

12 MS. MOTLEY: With regards -- Yes.

13 MR. WIRTH: Okay. But I -- I understand the Court's
14 ruling, obviously we will abide by it, but there's no reason
17:15 15 that Stippich and Kuhl should testify about their experiences
16 why they were on the list, why, you know, why they think the
17 modus operandi was.

18 THE COURT: No. I -- I am not allowing them to talk
19 about why they were on a list or the list. Again, that's
17:15 20 consistent with my ruling. They're not plaintiffs here. What
21 I'm hearing and what will revisit if they have information
22 specific as to what -- why Mr. Larry's information was
23 disclosed is what I'm leaving the door open to. Does he
24 have -- Do they have stuff about Mr. Larry relevant to
17:15 25 Mr. Larry's DPPA claim as it relates to the data or the list

17:15 1 that we have been talking about?

2 MS. MOTLEY: Yes, Your Honor, they do. I mean, it
3 goes to why. Why did Ratkowski choose to get John Larry's
4 information? So it is relevant. It goes to willful reckless.

17:15 5 This is not -- You know, I think there's been some
6 misspeaking. Heather Kuhl and Matthew Stippich are not on any
7 list. I want to be very clear about that. That we know about.
8 That's -- We understand what we're here for, we certainly more
9 than understand that this trial's going to be done on Friday
17:16 10 for sure. So they're quick witnesses. They will go specific
11 to the DPPA claim as it relates to John Larry.

12 THE COURT: All right. I will -- We will revisit.
13 I want to hear what they're going to say as to the DPPA
14 regarding Mr. Larry specifically.

17:16 15 MS. BAYNARD: And, Your Honor, can we revisit it
16 outside of the -- I guess when -- outside of the presence?
17 Like what I don't want to have is them get on the stand and
18 then do a bunch of objections and come off as, oh, there's a
19 reason we didn't want to --

17:16 20 THE COURT: We will revisit -- We will -- I'll make
21 a ruling whether they can take the stand at all if they have
22 relevant information after we hear from Mr. Ratkowski and the
23 plaintiffs still want to have them, how does it relate to his
24 testimony.

17:17 25 MS. MOTLEY: Thank you.

17:17 1 MS. BAYNARD: Very good.

2 THE COURT: Okay. Thank you. Have a good evening,
3 everyone. Please be here at 8:30 tomorrow morning, we'll take
4 the call -- call in the jury as soon as they get here.

17:17 5 MR. SCHWAB: Thank you.

6 THE BAILIFF: All rise.

7 (At 5:17 p.m. the hearing ended.)
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, THOMAS A. MALKIEWICZ, RPR, RMR,
CRR, an Official Court Reporter for the United States
District Court for the Eastern District of Wisconsin, do hereby
certify that the foregoing is a true and correct transcript
of all the proceedings had and testimony taken in
the above-entitled matter as the same are contained
in my original machine shorthand notes on the said
trial or proceeding.

Dated this 5th day of June, 2023.
Milwaukee, Wisconsin.

Thomas A. Malkiewicz, RPR, RMR, CRR
United States Official Court Reporter
517 East Wisconsin Avenue, Room 236
Milwaukee, WI 53202

Thomas_Malkiewicz@wied.uscourts.gov

ELECTRONICALLY SIGNED BY THOMAS A. MALKIEWICZ
Official U.S. Reporter, RPR, RMR, CRR
